

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24977
Docket Number MW-25199

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The suspension of Welder Helper J. B. Hope, Jr. from February 19 through March 18, 1982 for alleged violation of "Rule M810" was without just and sufficient cause and on the basis of unproven charges (System File MW-82-112).

(2) The charge leveled against the claimant shall be cleared from his record and he shall be compensated for all wage loss suffered including overtime pay.

OPINION OF BOARD: Claimant was informed by letter, dated February 22, 1982, that he was being suspended from service for violating Rule M 810 of the general rules and regulations of the Southern Pacific Transportation Company. The suspension was effective from February 19, 1982 through March 18, 1982. Several foremen charged that they observed Claimant sleeping on the back of fork lift vehicle 14129-R from 1:30 P.M. to 1:45 P.M. on February 19, 1982 which contravened Rule M 810. This rule reads in part:

"Employees must not sleep while on duty. Lying down or assuming a reclining position with eyes closed or eyes covered or concealed will be considered sleeping."

In response to this disciplinary action, Claimant requested a hearing consistent with the applicable procedures of Agreement Rule 14 and said hearing was held on March 16, 1982. Based upon the record compiled at that proceeding, Carrier apprised Claimant by letter, dated March 25, 1982, that the record testimony showed that he violated Rule M 810 and the suspension was sustained. This disposition was subsequently appealed by Claimant.

Organization contends that Carrier violated Article 14, particularly Section (b) since an unjust hearing was not held within the designated time limits required by this rule. In effect, they argued that Carrier was required to hold the hearing on or before March 9, 1982 which would have been fifteen (15) calendar days from the date of the request for a hearing. They further argued that even assuming arguendo that the Claimant was asleep, the foreman failed to awaken him immediately, thus acquiescing to his deportment. Moreover, the Organization asserts that Carrier has not demonstrated that the Claimant's behavior adversely affected the work scheduled to be performed by him that day.

Carrier contends that the eyewitness testimony of the foreman pointedly indicates that Claimant was observed sleeping in a reclining position for fifteen (15) minutes. It notes that Claimant was startled when he was awakened and avers that this observed behavior was confirmed by the testimony of Rail Grinder Operator A. E. Rodriguez. It argues that he was timed as being asleep for fifteen (15) minutes on the fork lift and asserts that he had to be shaken awake by the Welding Plant Supervisor O. W. Harris.

In our review of this case, we concur with Carrier's position. In Organization's ex parte submission to this Board, it raises a procedural objection, namely the asserted violation of Rule 14(b), that was not considered at the hearing or referred to and/or discussed during the claim's handling. It is new argument and barred from our consideration, pursuant to the requirements of Circular No. 1. As new argument we are precluded by our rules from judicially considering arguments that were not first raised on the property, and their averments regarding the timeliness of the unjust hearing are inadmissible now.

As to the dispute's substantive merits, the record evidence is clear that Claimant violated Carrier's General Rule M 810 when he was found sleeping on fork lift 14129-R. The consistent un rebutted testimony of the foremen and even Claimant's own implicit admission that his behavior did not affect his scheduled work assignments on February 19, 1982 unequivocally show that he was asleep from 1:30 P.M. to 1:45 P.M. He was studiously observed in this condition for fifteen (15) minutes and had to be awakened by the Welding Plant Supervisor. In fact, the same supervisor had to turn off the fork lift engine. Claimant denied he was sleeping, but offered no proof to substantiate his position. A doctor's note was submitted into the hearing record stating that due to hypertension and medication, Claimant can be sleepy on the job, but this presumptive line of defense was not pursued at the hearing. His supervisor was not aware of this alleged condition either before or after the charged violation. From this record, we must conclude that Claimant violated General Rule M 810 and it is a significant rule infraction. We believe, however, when his overall work record is considered that the suspension penalty imposed is somewhat excessive and we are reducing it to fifteen (15) days. We are confident that this penalty modification reflects a more balanced perspective of the situation and is consonant with the principles of progressive discipline. The Claimant is advised that we will not look kindly upon any recidivist behavior.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

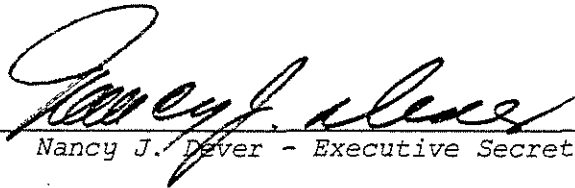
That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of September 1984.