

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25072
Docket Number CL-25190

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9770) that:

(a) Carrier violated the current Clerks' Agreement at Newton, Kansas, when on March 12, 1982, it suspended E. E. Stahl for a period of thirty (30) days and assessed the record of Mail Clerk E. J. Howard with thirty (30) demerits, and

(b) Carrier shall now restore E. E. Stahl to service with all seniority rights and other rights accruing thereto unimpaired, and

(c) Carrier shall allow Claimant Stahl eight (8) hours' pay for each work day forty (40) hours per week, at his current rate of pay for the thirty (30) day period he is held out of service as a result of suspension, and

(d) Carrier shall remove the thirty (30) demerits from the record of Ms. E. J. Howard and the personal records of both the above Claimants shall be cleared of all charges that now appear in the transcript of the investigation held on March 12, 1982, and

(e) Carrier shall pay each Claimant for full eight (8) hours for assigned working hours on February 18 and 19, 1982.

OPINION OF BOARD: Claimants hold seniority on Carrier's Middle Division Station Department Seniority Roster and are employed at Newton, Kansas. Claimant E. E. Stahl "as assigned to the Janitor's position at the time of the asserted disciplinary incident and Claimant E. J. Howard "as assigned to the zoned Extra Board and protecting a short vacancy on Mail Clerk Position 6050. On February 18, 1982 at about 4:25 A.M. Car Foreman Krise observed Claimant Stahl in the Division Office Mechanical Department Lounge sitting in a chair with his eyes closed. Foreman Krise left the lounge area at 4:45 A.M. and returned at 5:15 A.M. and discovered Claimant Stahl in the same identical position. Mr. Stahl left the area at 5:30 A.M.

On this same date, Agent G. L. Bohannon and Safety Supervisor T. L. Reardon arrived at the Axtell parking lot at approximately 11:45 P.M. and later observed Claimants Howard and Stahl arrive for work at 12:08 A.M. and 12:10 A.M. respectively. Since this was the start of both **employees'** midnight to 8:00 A.M. shift on February 19, 1982, they arrived late for work. Moreover, Claimant Howard "as observed entering the Division Office Building and then remaining in the Mechanical Department Lounge until 12:40 A.M. before beginning her assigned work. Claimant Stahl after arriving for work also went to the aforesaid lounge and remained there until 1:10 A.M. before commencing his duties.

An investigation was held on March 12, 1982 in connection with a possible violation of Rules 15 and 17, General Rules for the Guidance of Employees 1978; and Claimants were found guilty of the asserted rule infraction. Claimant Stahl was suspended for thirty (30) days and the personal record of Claimant Howard was assessed thirty (30) demerits. These dispositions were subsequently appealed in accordance with **the** applicable grievance procedures of the Controlling Agreement. For ready reference, Rules 15 and 17 are quoted hereinafter:

Rule 15

"Employees must report for duty at the prescribed time and place and devote themselves exclusively to their duties during their tour of duty. Those subject to call for duty will be at their usual calling place, **or** provide information as to where they may be located. They must not absent themselves from duty, exchange duties or substitute other persons in their places without proper **authority."**

Rule 17

"Employees must not enter into altercations, play practical jokes, scuffle or wrestle on company property.

Employees must devote themselves exclusively to their duties during their tour of duty.

Gambling, playing games, reading newspapers, books or use of television while on duty is prohibited."

In defense of his petition, Claimant Stahl contends that the testimony provided by Foreman Krise indicates three (3) separate versions of the alleged incident; and further notes that despite the fact that other people were in the lounge at the same time only Foreman Krise was called to testify. Claimant Stahl maintains that during the time he was supposed to be asleep, he responded to a statement made to him which shows that he was alert. He asserts that Claimant **Howard's** testimony is at odds with Foreman **Krise's**, particularly her statement that he (Stahl) left the lounge at 6:00 A.M. Claimant Stahl avers that the charges were not substantiated; and more pointedly asserts **that** his due process rights were violated when Carrier failed to call other witnesses. Claimant Howard acknowledged that she was away from her duties, but denies that she ever slept on the date charged.

Carrier contends that the record evidence fully supports the charges against Claimant Stahl since the combined testimony of Foreman Krise and Claimant Howard unmistakably show that Mr. **Stahl** was in the lounge sitting in a chair for approximately one (1) hour with his eyes closed. It asserts that Claimant **Stahl** confirmed via his own testimony that he was in the Mechanical Department Lounge for about one (1) hour on February 18, 1982 and moreover, admitted that he was sitting in a green chair at the time with his feet up on other chairs and his eyes closed part of the time. In addition, with respect to the penalty assessed against Claimant Howard, Carrier notes that she admitted her lateness and also acknowledged that she was late on past occasions. It avers that the Claimants' conduct was indeed violative of Rules 15 and 17 and the penalties imposed were not unreasonable or inconsistent with the normative principles of progressive discipline.

In our review of this case, we agree with Carrier's position. Claimant had acknowledged her misconduct and thus, the thirty (30) demerits assessment was a reasonable punishment under the circumstances. In fact, we might add that given the potential problems absence from an assigned duty could pose for a rail carrier, the penalty was mild to say the least.

We have carefully analyzed the investigative transcript regarding the charges proffered against Claimant Stahl and find that he was both **impermissibly** away from his assigned duties and asleep on the charged dates. The testimony of Foreman **Krise** as verified and supported by Claimant Howard's testimony clearly indicate that he was not casually relaxing, but instead was sleeping. Claimant Stahl argues that Carrier was obligated as part of its proof burden to call as witnesses the other persons who were in the lounge at the time, but the corroborated statements of Claimant Howard met the required evidentiary test. More important at this juncture in the **adversial** proof process, it was up to Claimant to produce such witnesses. An affirmative defense developed upon him to counter Carrier's evidence. By failing to disprove or place in serious contention the proofs adduced by Carrier, we have no recourse other than to sustain Carrier's disciplinary finding. An argument has been raised that the thirty (30) day suspension was unduly harsh and disproportionate discipline but we do not agree with this position. Based upon our review of the investigative transcript, we find that Carrier's sum total determination was consistent with the testimonial record and its findings and dispositions were reasonable. For these reasons we will deny the claim.

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 Employees involved in this dispute are respectively Carrier and **Employees** 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
by Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 4th day of October 1984.