

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25154

Docket Number MW-25250

Paul C. Carter. Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

(Former Penn Central Transportation Company)

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

(1) The ten days of suspension imposed upon Welder Helper L. G. Robinson for **allegedly** "Leaving your assigned position as watchman without permission on August 1, 1979" and his dismissal effective March 4, 1980 for allegedly "Sleeping during your tour of duty at 10:15 a.m. on Thursday, February 7, 1980" was without just and sufficient cause and on the basis of unproven charges (System Dockets 585 and 547).

(2) The claimant shall be reinstated with seniority and all other rights **unimpaired**, his record cleared of the charges leveled against him and and **(sic)** he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant had been in Carrier's service from May, 1976.

After a trial, or investigation, on September 26, 1979, he was assessed discipline of ten days suspension for:

"Leaving your assigned position as watchman, without permission, on August 1, 1979."

After a trial, or investigation, conducted on February 20, 1980, Claimant was dismissed from service for:

"Sleeping during your tour of duty at 10:15 A.M. on Thursday, February 7, 1980:

The two cases were handled separately on appeal on the property, but were combined by the Organization in submission to this Board. The Carrier objects to the Organization combining the two separate discipline disputes involving the same individual, as a single case in its submission to the Board. The Board finds no proper basis for the objection of the Carrier. While the cases were handled as separate cases on the property, the claim in behalf of the individual, as submitted to the Board by the Organization, has not been enlarged upon from the claims as handled on the property, and we do not find that the Carrier has been misled. The Carrier's objection in this respect is denied. See recent Award No. 24607 involving the same parties. The Board will, however, consider each alleged offense separately.

The Board has reviewed the transcripts of the trials conducted on September 26, 1979, and February 20, 1980, and finds that each was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated.

In the case of the ten-day suspension assessed for Claimant's actions on August 1, 1979, the record shows that on that date Claimant was working as watchman and helper for a foreman welder. The foreman welder testified that he had previously instructed the Claimant how to perform his duties as watchman; that on August 1, 1979, he was performing welding work on a certain frog; that he expected Claimant to notify him of any approaching train on the track upon which he was working; that he became aware of a train approaching on the track by a single blast of the air horn of the engine, followed by two **more** blasts, and when he raised up the watchman (Claimant) was not present. The foreman welder was able to get out of the way of the approaching train, but, at the time of the incident, he observed Claimant coming from behind the welding truck, which was some 35-40 feet from the welding site. A Locomotive Engineer testified that he was operating an engine on August 1, 1979, in the vicinity where the welding work was being performed, that he came close to hitting a welder; that the only person in the vicinity was a man standing four or five car lengths north of the the foreman welder, and that if the welding watchman had been within five feet of the welder, he would have seen him.

The Claimant contended in the trial that he recalled the incident but that he did not leave his assigned position as watchman. He contended that he did not have to warn the foreman welder of the approaching train as the foreman welder was aware of it and was standing up, leaving the track, and he (Claimant) was within five feet of him.

The Board finds that substantial evidence was presented at the trial to Support the ten-day suspension against the Claimant **for** his actions on August 1, 1979. While the testimony of the Claimant conflicts with that of the foreman welder and the Locomotive Engineer, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Carrier. The Board may not properly reverse the Carrier's determination simply because of conflicts in testimony.

As to the charge:

"Sleeping during your tour of duty at 10:15 A.M.  
on Thursday, February 7, 1980."

there was **testimony** presented at the **trial** conducted on February 20, 1980, by the Track Supervisor that Claimant appeared to be sleeping while sitting in the welding truck about 10:15 A.M. There was also testimony from the Assistant Track Supervisor that Claimant was sitting in the truck sleeping, with his head down on his chest. Claimant denied that he was sleeping on duty, but contended that he had a foreign particle in his eye while sitting in the truck, and was trying to force his right eye to tear to get the particle out.

We consider the testimony of the Track Supervisor and the **Assistant Track Supervisor** as constituting substantial evidence in support of the charge against the Claimant of sleeping during his tour of duty as **10:15 A.M.**, Thursday, February 7, 1980. While there were conflicts between the testimony of Claimant and other witnesses, we have previously commented on the functioning of the Board in such instances. There is no reason to repeat here what we have previously stated on this **subject**.

Complaint has also been made by the Organization as to the introduction of Claimant's past discipline record into the trial. A review of **Claimant's** prior record in the trial was not in violation of the Agreement or prejudicial to **Claimant**.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier on either of the charges.

**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;

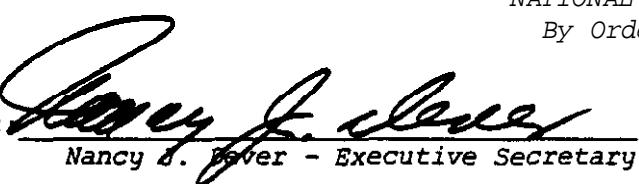
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest   
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois this 30th day of November 1984.