

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award **Number** 25159
Docket Number MW-25300

Paul C. Carter. Referee

(Brotherhood of Maintenance of Way **Employees**
PARTIES TO DISPUTE: {
(National Railroad Passenger Corporation (Amtrak))

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

(1) The dismissal of **Trackman** L. A. Hendricks for alleged violation of "Rule 4143" was without just and sufficient cause (System Docket 2900).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, with a seniority dating from August 7, 1980, was assigned to Surfacing Gang Y-232, working under the supervision of Assistant Foreman **J. Bellin** and Project Engineer A. McNally, when the occurrence giving rise to the dispute **herein** occurred.

On June 25, 1981, Claimant was notified to appear for trial on July 6, 1981, on the charge:

"On Friday, 6/19/81, M.P. 103.5, at approximately 1:40 P.M., you were observed sleeping or assuming the attitude of sleep while on duty as an advance gang watchman which is a flagrant violation of Amtrak Safety Rules and **Instructions**. Rule 4143, which reads: 'Gang watchmen must give their entire attention to watching for trains and warning the men and must not perform, even momentarily, and (sic) other duties. They must not leave their post until instructed by the man in charge that protection is unnecessary or another gang watchman has been assigned and is in position and watching for approaching trains,' and is also a violation of Rule L of the National Railroad Passenger Corporation's Rules of Conduct."

Rule "**L**" of the National Railroad Passenger Corporation Rules of Conduct, referred to in the notice of charge, reads:

"**L**" #Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority."

The trial was conducted on July 6, 1981, as scheduled. Claimant was present throughout the trial and was represented. A transcript of the trial has been made a part of the record. ~~Following the~~ trial, Claimant was notified by certified mail of his dismissal from service. ~~While~~ the discipline notice was dated June 15, 1981 (obviously in error), certified receipts show that the discipline notice was mailed July 17, 1981, and receipted for by Claimant on July 22, 1981.

In the trial substantial evidence was presented in support of the charge against Claimant. There was direct testimony by the Project Engineer that Claimant, while on duty, as advance gang watchman and under pay, was performing no work for the Carrier but was seated in a nearby passenger station with his head bowed, eyes closed and apparently asleep about 1:40 P.M. It is apparent that Claimant took it upon himself to determine that the services of an advance gang watchman were not needed when he left his post of duty and went to the nearby passenger station. Such a decision was properly to be made by supervisory personnel and not by Claimant.

We will deny the claim on the merits, without passing upon the ~~time~~ limit issue raised by the Carrier, or the complaint of the Organization as to the date of ~~the~~ discipline notice to Claimant.

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

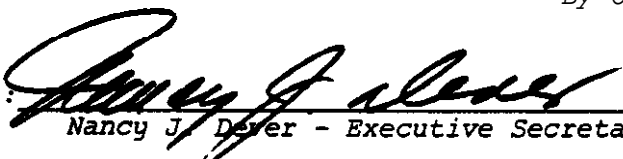
That the Agreement was not violated.

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 30th day of November 1984.