

NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD** DIVISION

Award Number 25220  
Docket Number MW-25269

James Robert Cox, 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 thirty (30) days of suspension imposed upon Track Foreman **R. J. Penman** for alleged violation of 'Rule **L**' was arbitrary, capricious, unwarranted and on the basis of unproven charges (System Docket **326D**).

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

OPINION OF BOARD: Amtrak Rules of Conduct, Rule L, forbids sleeping on duty. General Track Foreman Burek in the Philadelphia Subdistrict entered the Arsenal Tower November 4, 1981 about 9:35 a.m. and observed Claimant Penman "seated in a chair, his legs were extended, head back, eyes closed and appeared to be in a comfortable position...". One witness, **McKeever**, testified that Claimant was sitting back in his chair when Burek was in the Tower. At the time of **Burek's** observation, in addition to Penman, there were four other railroad **employees** in the Tower. All testified they **were** not close enough to have heard any conversation the Foreman had with Penman almost immediately after he entered the room. None could establish that Penman was awake. The nearest was twenty feet away. Some did not see any conversation activity between the Foreman and the Claimant.

All **employee** witnesses were asked the **conclusionary** question of whether Penman was in a position of sleep rather than requested to describe his appearance.

After General Track Foreman Burek spoke to Penman, he opened his eyes and appeared awake. Burek did not discuss the sleeping **or** issue any reprimand.

Penman had been sitting at his desk with track inspection reports in front of him.

While the evidence supports a finding that Penman was detected in a position appearing to be asleep, Claimant was properly in the Tower about to perform assigned duties. The interval during which he was apparently sleeping was not established to have been more than a minute **or** two. There is no evidence that Claimant intentionally concealed himself in order to sleep **or** that he did any more than "nod off". There is no basis for this Board to overturn the credibility finding supporting **Burek's** testimony.

Under these circumstances, the Board concludes that the thirty-day discipline **imposed** upon Track Foreman Penman was excessive and it is reduced to a fifteen-day suspension. Claimant is to be made whole for any loss of pay suffered.

FINDINGS: 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

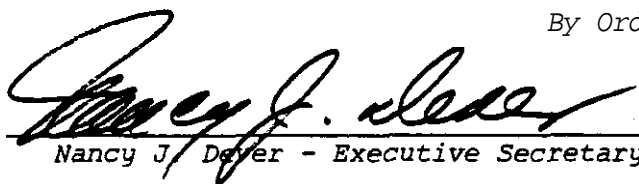
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.