

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25287
Docket Number CL-24895

I. M. **Lieberman**, Referee

(Brotherhood of Railway, Airline **and** Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Seaboard System Railroad

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9701), that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner violating Rule 15 and other rules of the Agreement, when it suspended Truck Operator D. A. Sinuefield from service for ten (10) days beginning June 8, 1981, following an investigation held on May 20, 1981.

2. As a consequence, Carrier shall:

(a) Clear **Mr. D. A. Sinuefield's** service record
of charges set forth in District Supervisor
J. K. Beasley's letter of **May 12, 1981**.

(b) Compensate **Claimant** Sinuefield for all time
Lost and any other benefits taken from him as
a result of Carrier's action.

OPINION OF BOARD: Claimant herein, a **Surveyman**, was assigned to the Miami TOFC piggyback ramp facility with hours of work from Midnight to 9:00 A.M. The record indicates, without dispute, that on March 29, 1981, Claimant, after reporting to work asked the Rate Clerk, Mr. **Whisler**, if there was anything for him to do. **When** told there was not, Claimant then told **Whisler** that he would be in his personal van, and **Whisler** responded "O.K.". Claimant's duties included checking trailers arriving and departing the facility. A trailer left the property at **3:08** A.M. that morning and it was not checked by Claimant. Claimant was found Lying in his van in a sleeping bag at approximately **6:30** A.M. and then got up and reported to his normal work Location. Claimant was charged with a series of violations of Carrier rules all related to his being found in the **van** and having neglected his work. He was charged with neglect **and** being asleep while **on** duty and under pay. He was found guilty of Leaving his assigned position without authority and was found lying down in his van while on duty. He was accorded a ten-day suspension by Carrier.

Petitioner argues that Claimant had permission to be in his van **and** further that Carrier did not prove any violation of its rules by Claimant. Further, it is argued that there was no evidence whatever to show that **Claimant** was asleep during the period in question. Carrier **asserts** that the evidence is clear **and** that Claimant was guilty of the charges.

The Board notes that there were a number of extraneous issues raised by Petitioner which do not have merit for various reasons. The crux of this dispute is whether there was sufficient evidence to support Carrier's conclusion that Claimant, without proper authority, left his position and spent over six hours in his **van on** the night in question. In the Board's view, there was ample evidence to support Carrier's conclusion that Claimant was guilty, particularly in view of the apparent credibility findings of the **Hearing** Officer. Since the Hearing **was** not flawed and in view of the total record, the penalty was not improper. The claim must be denied.

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 28th day of February 1985.

