

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25292
Docket Number CL-24579

George S. Roukis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employes**
PARTIES TO DISPUTE: (
(New Orleans and Northeastern Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-95741 that:

Carrier violated the Agreement at Meridian, Mississippi, when on September 27, 1980, it unjustly dismissed Mr. T. R. Dicks, Station and Yard Laborer, from the service, account an alleged failure to **comply** with instructions, being asleep while on duty, and conduct unbecoming an employee.

For this violation, the Carrier shall now be required to restore Mr. T. R. Dicks to service with all rights and benefits unimpaired, and compensate him for all time lost, beginning September 27, 1980, and continuing until such restoration has been accomplished.

OPINION OF BOARD: Claimant, who was first employed by Carrier on August 8, 1978, was removed from service on September 27, 1980, for several workplace infractions. Specifically, he was dismissed for failure to **perform** assigned duties, failure to comply with instructions, conduct unbecoming an **employee** and being asleep while on duty. Consistent with the provisions of Rule C-1 of the Controlling Agreement, Claimant requested an investigation, which was held on October 17, 1980. On October 24, 1980, Carrier notified Claimant by Certified Mail that it was sustaining its September 27, 1980, dismissal action since the investigative record clearly established that he was asleep while on duty on September 26, 1980. This disposition was appealed.

In defense of his petition, Claimant argues that he **performed his** assigned duties in the yard office and Superintendent's office at Meridian, Mississippi, on **Septemer** 26, 1980; and notes the testimony of several witnesses who observed him that day sweeping, mopping, emptying garbage cans, cutting grass and picking up bays of ice and pulpwood. He further asserts that he was not provided written assignment instructions on September 25, 1980, as alleged by Carrier; and avers that said instructions were not submitted at the investigative hearing.' He maintains that he was sick when he was found lying down on a bench in the Switchmen-Engineers Wash and Locker Room at about **3:45 P.M.**; and attributes his condition to the nausea he experienced while cutting grass in the sun. He contends that his illness was evident as he had asked Superintendent J. Delaney, Jr. to permit him to remain there for a few more minutes.

Carrier asserts that the record testimony of Superintendent Delaney pointedly establishes that Claimant failed to perform any of the general housekeeping required of his position. It contends that Claimant had not emptied the trash cans in several identifiable offices nor cleaned the inside of the office building. It argues that the testimony of both Superintendent Delaney and Special Services Police Lieutenant R. H. **Styron** demonstrates that Claimant was asleep when he was found by them at 3:45 P.M. in the Switchmen's Locker Room. In particular, it notes that Claimant did not respond to Superintendent Delaney's initial call and only responded when the Superintendent grabbed his leg and shook it. It maintains that Claimant acknowledged that he had never told anyone of his alleged illness and avers that he had never proven he was ill.

In our review of this case, we concur with Carrier's position. Essentially, what is at issue herein is the credibility of the contending witnesses. While the record appears to suggest a classic stand off position, the test of whether Claimant was asleep while on duty pivots on his proving that he was ill when found by Carrier's officials. Carrier's two eyewitnesses testified he was asleep when they located him in the Switchmen-Engineer's Wash and Locker Room at 3:45 P.M. and Claimant denies this assessment. He asserts that he was merely lying down on the bench recuperating from his nausea. There is no reason to suggest any prior or existing animus on the part of these officials or any indication of a **biased** predisposition. However, once the evidence was adduced **that** he was sleeping, Claimant's denial and his counter assertions required some modicum of substantiation. By Claimant's own admission, he stated that he had not apprised anyone about his purported illness. He had an **opportunity** at 3:00 P.M. to inform the **Yardmaster**, when by his own testimony he was looking for a bandage and salt pills in the **Yardmaster's** office, but he did not avail himself of this chance. This behavior is highly unlikely, especially when he admitted that he was lying on a bench in the Switchmen's Locker Room for about 40 minutes. The closeness in time between his presence in the Yardmaster's office and his discovery therein by Carrier officials at 3:45 P.M. renders his defense suspect. We are convinced that he was asleep while on duty on September 26, 1980, and such department constitutes a serious breach of the employment relationship. We find no reason to modify Carrier's determination and its dismissal action is accordingly sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deter - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.