

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25582
Docket Number MW-25739

Stanley L. Aiges, Referee

(Brotherhood of Maintenance of Way **Employes**
PARTIES TO DISPUTE: (
(The National Railroad Passenger Corporation
(**Amtrak**) - Northeast **Corridor**

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

(1) The thirty (30) days of **suspension** imposed upon **Trackman K. Flanigan** for alleged violation of Rule "**L**" and Rule "**4143**" was without just and sufficient cause and on the basis of unproven charges (System Docket 464D).

(2) The claimant's record **shll** be cleared of the charges leveled against him and he shall **be** compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was issued a 30-day **suspension** for violating General Rule "**L**" and Safety Rule **#4143**. Rule "**L**" bars sleeping while on duty. Safety Rule **#4143** requires **Gang** Watchmen to give their 'entire attention to watching for trains and warning the men...".

The incident which gave rise to this dispute occurred on June 10, 1982. Claimant was assigned the position of Gang Watchman in the Baltimore and Potomac Tunnel on the Carrier's Baltimore Division of the Northeast Corridor. Master Mechanic **J. Hamilton** of the Mergentime Corporation, a sub-contractor, testified that at about 6:00 a.m. he found his work **crew** standing at the top of the Argyle Street Bridge. He asked why they were not working. They told him the Flagman was asleep. **He** sent a crew member to wake him up. Five minutes later, several crew members returned. They said that they had aroused Claimant, but that he had gone back to sleep. **Hamilton then** stepped around the edge of the bridge and looked down. He saw Claimant sitting inside the scoop of a backhoe in a slumped position with his eyes closed. **Hamilton** then called **Claimant's** Foreman, J. Bennett, Jr. Bennett **came** over to the bridge. As he put it, he also observed Claimant sleeping. He could not, he admits, see if Claimant's eyes were closed. But **from** his slumped over position he plainly appeared to be asleep.

Claimant. suffice it to say, flatly denies having been asleep. He insists he was at all times in a position to perform his flagman duties.

The record, read as a whole, fully supports the Carrier's position here. We are satisfied that the **evidence** establishes Claimant was indeed asleep on duty at about 6:00 a.m. on June 10, 1982. His **action** clearly compromised the life and safety of other workers who were dependent upon his attention to his duties. **His** offense is a serious one. We cannot conclude the discipline **imposed** was excessive. **The** claim is 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~~ **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 22nd day of August 1985.

