

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25656  
Docket Number CL-25355

Robert W. McAllister, Referee

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

PARTIES TO DISPUTE: {

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-98071 that:

"(1) **Carrier** violated the Agreement rules, particularly Rule 21, when under date of **April 16, 1982**, it dismissed Mr. D. D. **Bonner** from **service** on the basis of a formal hearing on the same date, to be effective April 19, **1982**, with assessed discipline being later reduced to a sixty (**60**) day suspension, and,

(2) Carrier shall be required to clear the record of Mr. D. D. **Bonner** of all related charges and compensate him for all time lost account being required to serve the actual sixty (60) day suspension.

OPINION OF BOARD: The Claimant, D. D. **Bonner**, is a custodian who has been in service since 1953. A formal investigation was held on April 16, 1982, on the Claimant's charged failure to comply with Rule 23 in that he was observed sleeping at approximately **4:10 A.M.**, April 13, 1982. Following the hearing, the Claimant **was** dismissed from **service**. Subsequently, the dismissal **was** reduced to a sixty day **suspension**. The Organization insists the Carrier has failed to meet **its** burden of proof and, at best, established the Claimant was rising from a position where he had one knee on the floor.

The Board's review of the record reaches an opposite conclusion. While the testimonies of R. K. Peterson, the Manager of Budgets, and the Claimant are in direct conflict, we find the Claimant essentially acknowledged he was lying down. The explanation for being in a conference room with the lights turned off was that the Claimant **was** on a break. The evidence does not support this assertion. Lying down is considered sleeping under Rule 23.

This long term employee had an excellent record until November of 1981 when he was issued a thirty day suspension. This discipline is his second suspension in 1982, both within a three and one-half month period. Considering the offense, coupled with the Carrier's reduction of dismissal to a sixty day suspension, this Board finds the Carrier's actions to be reasonable and proper.

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

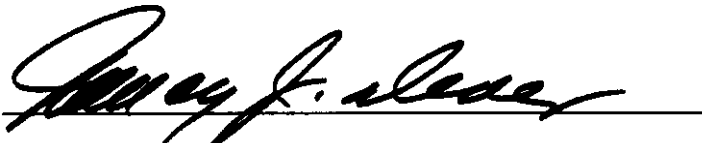
That the Agreement was not violated.

**AWARD**

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 September 1985.

