

SATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number '26389

Docket Number MW-26539

Edwin H. **Benn**, Referee

(Brotherhood of **Maintenance** of Way Employees
PARTIES TO DISPUTE: (
(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** R. F. MacKenzie for alleged 'Violation of Rule "L"' (assuming the attitude of sleep) on November 2, 1983, was without just and sufficient cause (System File **NEC-BMWE-SD-825D**).

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

OPINION OF BOARD: Claimant was withheld from service on November 2, 1983, for sleeping in a Carrier motor vehicle on that date. The record demonstrates that Claimant and two other employees were observed sleeping while on duty by two Carrier Supervisors. After Hearing on January 10, 1984, and by letter dated January 24, 1984, Claimant was assessed a 30 day **suspension**.

The Organization's argument that the Carrier improperly withheld Claimant from service under Rule 69 since sleeping is not a major offense under that Rule cannot be considered by this Board since it was not properly raised on the property.

We reject the Organization's argument that Claimant was improperly notified of his withholding from service by the Track Supervisor rather than the Division Engineer where Rule 69 requires the "department head" to make notification of such action. In similar situations, the same argument advanced by the Organization has been made and not sustained. See Public Law Board No. 2406, Award No. 47.

With respect to the merits of the Claim, we find substantial evidence in the record to support the Carrier's determination that discipline should be imposed. Two Carrier witnesses testified that they observed Claimant sitting in the vehicle with his eyes closed for between 60 and 90 seconds. Such is sufficient to establish that Claimant was in violation of Rule L which prohibits sleeping. Sleeping on duty has been found to be an offense subject to discipline including discharge. See Third Division Award 243653 Second Division Awards 10498, 9260, 8886, 8712, 8537. Standing alone, the fact that credibility conflicts existed in the record does not **cause** this Board to resolve credibility different from that made during the Investigation. Second Division Awards 10498, 8712, *supra*. Nothing has been shown in this record that can cause us to make a contrary credibility determination. Finally, no showing has been made that a 30 day suspension was arbitrary or capricious.

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 13th day of July 1987.