

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26573
Docket Number MU-27040

Elmer F. **Thias**, Referee

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

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

(1) The ten (10) days of suspension imposed upon Bus Driver C. L. **Parham** for alleged violation of General Rule 'L' on September 14, 1984 was arbitrary, capricious and on the basis of unproven charges (System File **NEC-BMWE-SD-1115D**).

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

OPINION OF BOARD: This dispute involves a ten day disciplinary suspension which Carrier imposed upon the Claimant because he is said to have been sleeping while assigned to the position of Bus Driver on the date here involved. Claimant was withheld from service during the period between September 14, and September 20, 1984. The Specification of the charges placed against the Claimant "as as follows:

"Specification: On September 14, 1984 at
5:10 a.m. at Perryville
Interlocking, MP 59.6.
you were sleeping in the
back seat of bus **#8991**."

A Trial **was** held on September 27, 1984. and concluded on October 4, 1984, with the Claimant and his representative present. Six other witnesses were called to testify in addition to the testimony of the Claimant. Following completion of the Trial, the Carrier held the Claimant to be responsible for the offense charged and Carrier imposed a ten day suspension. Appeals have been taken by the Organization and they have been denied by the Carrier. The dispute has been appealed to this Board and it is properly before us.

In the handling on the property and in the appeal to this Board. the Carrier relies heavily upon one sentence contained in the initial testimony of the Track Supervisor. That sentence reads as follows:

"**So**, I walked around the side of the bus, looked in the window and Mr. **Parham** was stretched out on the seat back against the window and he was in the position of sleep."

Upon further examination, the Track Supervisor testified that the Claimant was sitting in a seat with his back against a window in the bus. The Track Supervisor also testified that the Claimant was sitting halfway from the front of the bus.

In opposition to the testimony of the Track Supervisor, the Claimant testified in detail as to the **reason** he had gone to the bus and he explained numerous duties in which he was engaged when the Track Supervisor appeared at the front door to the bus. Two **Trackmen** had observed the incident in question and they were called as witnesses during the Trial. The testimony of these two witnesses was given in detail and their testimony corroborated the testimony of the Claimant.

In the circumstances related above and other incidents as well, we perceive the testimony of the Track Supervisor to be ambivalent while the testimony of the Claimant and the two **Trackmen** is clear and direct. Thus, the issue before us is not one of credibility of the witnesses nor how conflicting testimony should be resolved. Our task is to decide whether the relevant evidence in the record is sufficient to substantiate the discipline imposed by the Carrier.

Upon review and consideration of the entire record, it is our conclusion that the evidence is not sufficient to support the finding made by the Carrier.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.