

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31444
Docket No. SG-31513
96-3-93-3-549

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corporation (NRPC-N):

Claim on behalf of E.K. Murphy for removal of discipline from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 58, when it failed to provide the Claimant with a fair and impartial hearing on charges of misconduct and then imposed discipline of a ten-day deferred suspension despite failing to meet its burden of proving the charges against the Claimant. Carrier's File No. NEC-BRS (N)-SD-601D. BRS File Case No. 9008-NRPC(N)."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

In this case, the Claimant was assigned as an Assistant Foreman on duty at the C&S Trouble Desk, Boston, Massachusetts. At approximately 5:10 A.M. on April 22, 1993, Claimant was observed by the Supervisor of Operating Rules in a position at his work site which, in the opinion of the Supervisor, indicated that Claimant was asleep while on duty. As a result of the observation, Claimant was instructed to appear for a formal investigation on the charge:

"Violation of Rule F.5, Amtrak Rules of Conduct.
'Employees must not sleep on duty and must not be so
inattentive to their jobs as to appear to be sleeping.'"

After an agreed upon postponement, the Hearing was eventually held at which time Claimant was present, represented and testified on his own behalf. From the Board's review of the 60-page transcript, it appears that all of Claimant's due process rights were respected. Following the completion of the Hearing, Claimant was assessed a 10-day deferred suspension. On appeal, the discipline was modified to "a ten (10) day deferred suspension for a two-year period of time."

The Board reviewed the transcript as well as the Hearing Officer's Decision Letter and the respective positions of the parties as expressed during the on-property handling of the dispute. On the basis of this review and after considering the relative convincing force of the testimony and evidence, the Board concludes that the substantial burden of proof which must be achieved by the Carrier in a discipline case has not been met in this instance. While the Claimant was accorded a fair and impartial Hearing, the discipline imposed subsequent to the Hearing was not supported by substantial probative evidence. Therefore, that portion of the Statement of Claim relative to the imposition of discipline is sustained. The charge and discipline must be removed from Claimant's record.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of April 1996.