

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31991
Docket No. SG-32652
97-3-95-3-583**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company**

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Co. (SP):

Claim on behalf of J. O. McArthur for payment for compensation for all time lost as a result of his three-day suspension from service, beginning December 5, 1994, and for his record to be cleared of all charges in connection with this discipline, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it did not provide the Claimant with a fair and impartial investigation and assessed harsh and excessive discipline against him in this matter without meeting the burden of proving the charges. Carrier's File No. SIGD 95-2. General Chairman's File No. SWGC-1027. BRS File Case No. 9724-SP."

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 were given due notice of hearing thereon.

The record shows that on October 24, 1994 at 10:30 A.M., Roadmaster Royal observed Claimant while on duty in a parked Carrier vehicle at Milepost 368.4 "lying in his seat, had his visor on the right hand side was shaded, he had a news paper or something over it, and I just noticed he was laying down" Royal brought Signal Supervisor Gaston back to the location at approximately 11:30 A.M. and observed Claimant in the same state. According to Royal, Claimant "had his head resting on the driver's side and he was asleep. I mean he was totally asleep. He, at that time, he did not wake up, so Mr. Gaston went back to his pickup, got a camera, come back and took his picture." Claimant awoke when Royal tapped on the window.

Substantial evidence supports the Carrier's determination that Claimant was sleeping in violation of Rule 1.11 which prohibits sleeping while on duty. A three day suspension for that conduct is neither arbitrary or capricious.

This claim is without merit.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.