

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36880
Docket No. CL-36893
04-3-01-3-441**

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Intermodal Terminals, Inc. (former CSX/Sea-Land
(Terminals, Inc. - Fruit Growers Express Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12759) that:

- (a) The Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of dismissal on Ms. Antoinette Pannell on August 24, 2000.**
- (b) Claimant’s record be cleared of the charges brought against her on August 9, 2000.**
- (b) Claimant be restored to service with seniority and all other rights unimpaired and she be compensated for wage loss sustained in accordance with the provision of Rule 43(f).”**

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.

As a result of charges dated August 9, a Hearing was held on August 11 and by letter dated August 24, 2000, the Claimant, a Clerk at East St. Louis, was dismissed for sleeping on duty, being on duty in a position conducive to sleeping and dereliction of duty.

Substantial evidence developed during the Hearing shows that while on duty on August 9, 2000, at approximately 3:00 A.M., the Claimant was observed with her head slumped over a steering wheel of a Carrier vehicle and that the vehicle had been in the same spot for approximately 20 to 25 minutes. Substantial evidence, therefore, supports the Carrier's position that the Claimant engaged in misconduct as charged.

With respect to the amount of discipline, we do not find that dismissal was arbitrary. As we found in Third Division Award 36879 the Claimant has repeatedly engaged in the same misconduct and, as stated in that Award, we do not believe that a reduced disciplinary action would serve to correct her misconduct. Because we have already upheld her dismissal in Third Division Award 36879, doing so again would only be moot.

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 25th day of February 2004.