

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24365
Docket Number CL-24250

Edward M. Hogan, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 { Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9497)
that:

Carrier violated the Agreement at Atlanta, Georgia, when on February 29, 1980, it dismissed Ms. J. A. Webster, Data Input Operator, on a charge of sleeping on duty.

For this violation, Carrier shall restore Ms. J. A. Webster to service with all rights unimpaired and compensate her for all time lost, commencing February 29, 1980, and continuing until such restoration has been accomplished.

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on February 29, 1980. She had been charged by the Carrier with sleeping while on duty. An investigation was requested by the Organization to determine the propriety of the assessed discipline. The investigation was conducted on March 14, 1980, and the previously imposed discipline of dismissal was confirmed.

The Organization claims that the conduct of the hearing was arbitrary and capricious in that no fair and impartial hearing was conducted insofar as the Claimant's entire work record was introduced at the investigation. The Claimant contends that the record was introduced to prejudice the hearing. A related contention of the Claimant is that the Carrier did not meet its burden of proof in substantiating the charges against the Claimant.

We cannot agree with the issues raised by the Claimant. It has been well-settled by this Board that the scope of our review is limited. We are not the trier-of-fact; we cannot substitute our judgment over that of the hearing officer. Furthermore, absent a clear abuse of discretion, arbitrary or capricious behavior on the part of the hearing officer which would so prejudice a Claimant's case, we must uphold the findings-of-fact as adduced at the hearing. (See Third Division Awards 14700 and 10571).

We must also address the issue as to whether the discipline imposed was reasonable given the circumstances. Sleeping while on duty has been long held to be a "dismissible offense." (Third Division Awards 12811 and 10440). The very safety of not only the Carrier, but also fellow employees of the Claimant depends upon a work place where all employees are alert and certainly awake. To permit or condone otherwise would permit serious safety hazards in the industry. This cannot be permitted or allowed. Therefore, we find that the discipline imposed upon the Claimant to be reasonable.

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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.

