

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25582
Docket Number MW-25739

Stanley L. Aiges, Referee

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

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

(1) The thirty (30) days of suspension imposed upon Trackman K. Flanigan for alleged violation of Rule "L" and Rule "4143" was without just and sufficient cause and on the basis of unproven charges (System Docket 464D).

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

OPINION OF BOARD: Claimant was issued a 30-day suspension for violating General Rule "L" and Safety Rule #4143. Rule "L" bars sleeping while on duty. Safety Rule #4143 requires Gang Watchmen to give their "entire attention to watching for trains and warning the men...".

The incident which gave rise to this dispute occurred on June 10, 1982. Claimant was assigned the position of Gang Watchman in the Baltimore and Potomac Tunnel on the Carrier's Baltimore Division of the Northeast Corridor. Master Mechanic J. Hamilton of the Mergentime Corporation, a subcontractor, testified that at about 6:00 a.m. he found his work crew standing at the top of the Argyle Street Bridge. He asked why they were not working. They told him the Flagman was asleep. He sent a crew member to wake him up. Five minutes later, several crew members returned. They said that they had aroused Claimant, but that he had gone back to sleep. Hamilton then stepped around the edge of the bridge and looked down. He saw Claimant sitting inside the scoop of a backhoe in a slumped position with his eyes closed. Hamilton then called Claimant's Foreman, J. Bennett, Jr. Bennett came over to the bridge. As he put it, he also observed Claimant sleeping. He could not, he admits, see if Claimant's eyes were closed. But from his slumped over position he plainly appeared to be asleep.

Claimant, suffice it to say, flatly denies having been asleep. He insists he was at all times in a position to perform his flagman duties.

The record, read as a whole, fully supports the Carrier's position here. We are satisfied that the evidence establishes Claimant was indeed asleep on duty at about 6:00 a.m. on June 10, 1982. His action clearly compromised the life and safety of other workers who were dependent upon his attention to his duties. His offense is a serious one. We cannot conclude the discipline imposed was excessive. The claim is denied.

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

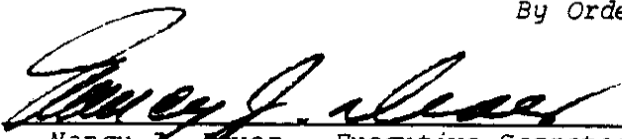
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.

