

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26012  
Docket Number CL-26199

John W. Gaines, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Seaboard System Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood  
(GL-9966) that:

1. Carrier acted in an arbitrary, capricious, uncalled for and discriminatory manner when on November 11, 1983, it removed and dismissed Clerk-Laborer L. Jenkins from service of the Carrier.
2. As a result of the above violation, Carrier shall:
  - a. Restore Clerk-Laborer Jenkins to service of the Carrier with all seniority, vacation and other rights unimpaired.
  - b. Compensate Clerk-Laborer Jenkins for all time lost commencing with November 11, 1983, and continuing until Clerk-Laborer Jenkins is restored to service, less outside earnings.
  - c. Compensate Clerk-Laborer Jenkins any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance under Group Policy No. GA-23000 and, in the event of the death of Clerk-Laborer Jenkins, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.
  - d. Compensate Clerk-Laborer Jenkins interest at the rate of ten (10) percent, compounded annually on the anniversary of this claim, for the amounts due under Item (b) above."

OPINION OF BOARD: Severity of the discipline of dismissal is at issue here.

Claimant is a Clerk-Laborer with service dating from May 24, 1977. Extensive testimony showed that Claimant was sleeping on duty at 5:45 A.M., November 10, 1983, having been awakened from sleeping on duty at 4:40 A.M. on November 10, 1983. He admitted being asleep on duty at 4:22 A.M. the next morning, November 11, 1983. These incidents resemble incidents on October 28 and 29, 1977, for which this Claimant was assessed a 30 day suspension for sleeping on duty.

Claimant claims factors in mitigation. Those factors are unconvincing.

Considering that leniency is primarily Carrier's prerogative and also considering Claimant's overall employment record, we will not disturb Carrier's decision dismissing Claimant. Sleeping on duty is a recognized dismissal offense, and the resulting punishment is not disproportionate or unreasonable under the circumstances here.

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 Employee involved in this dispute are respectively Carrier and Employee 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

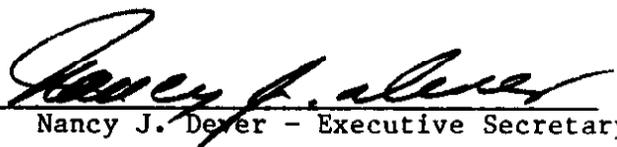
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1986.

