

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26668
Docket Number MW-26666

Dana E. Eischen, Referee

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

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

1. The discipline 'time out of service to apply (21 days)', imposed upon Track Foreman D. Williams for alleged violation of Rules 'E', 'L' and 'K' on April 12, 1984 was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-901D).

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: The Claimant entered Carrier's service in 1977. In 1984 he held the position of Track Foreman on the Baltimore Division. On April 12, 1984, at approximately 4:45 A.M. an Assistant Track Supervisor observed Claimant in the Odenton Base lunchroom, lying across several chairs. Two employees under Claimant's supervision were standing around the lunchroom. The Supervisor approached Claimant and, after nudging him a couple of times, asked him what was going on. Claimant responded in words or substance that he had been having trouble with the burro crane and radio. Therefore, he had cleared the crane back up at Odenton Base.

The Assistant Superintendent took Claimant out of service pending investigation. Shortly thereafter that evening, the Assistant Supervisor learned that Claimant had taken himself off the clock at 3:00 A.M. after complaining of illness.

Under date of April 16, 1984, Claimant was summoned to an Investigation into the following charges:

"VIOLATION OF NRPC OPERATING RULES AND INSTRUCTIONS
GENERAL RULE E which reads in part: Sleeping or
assuming an attitude of sleep while on duty is prohibited

VIOLATION OF NRPC GENERAL RULES OF CONDUCT RULE 'L'
which reads: Employees shall not sleep while on
duty, be absent from duty, exchange duties or substitute others in their place, without proper authority.

VIOLATION OF NRPC RULES OF CONDUCT RULE 'K' which reads: Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor.

SPECIFICATION: In that on April 12, 1984 at the Odenton MW Base, you were observed sleeping in the lunch room at approximately 4:46 AM. You also permitted Walter Miciche, a trackman in your charge, to sleep while on duty. Further you did not attend to your assigned duties and did not comply with instructions from your supervisor."

By notice of May 2, 1984, Claimant was assessed 21 days suspension without pay upon a finding by Carrier that he was guilty as charged of sleeping on duty and permitting an employee under his supervision to sleep on duty.

A review of the record evidence shows that Claimant was in fact ill on the night in question and had taken himself "off the clock" at 3:00 A.M. For reasons known only to himself, however, he did not mention any illness to the Assistant Supervisor who found him lying down while ostensibly on duty. Nor did he seek authorization from appropriate supervision before marking off due to illness. Accordingly, the mitigating factor of his illness is offset by this curious behavior.

On the other hand, Carrier assessed 21 days disciplinary suspension on asserted grounds that Claimant was guilty not only of sleeping on duty but also of permitting another employee to do so. On this latter point, there is not a shred of evidence to support Carrier's contentions.

Upon consideration of the countervailing factors present in this case, we are persuaded that proper disposition of this matter requires reduction of the penalty imposed to a ten day suspension without pay.

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

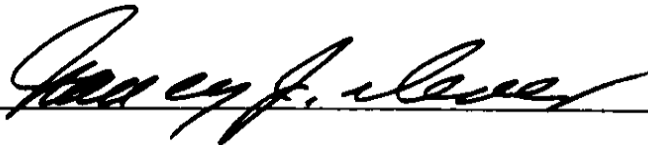
That the Agreement was not violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: _____



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1987.