

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

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 imposed upon Welder D. Cirone for alleged 'Violation of Rule "L"' was arbitrary, capricious, without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SD-763D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

Subsequent to an investigation, the Claimant was found guilty of the charge of sleeping while on duty, and was suspended sixty days.

We have very carefully reviewed and considered the Organization's procedural and due process contentions and, while we are not unappreciative of the points made on behalf of the Claimant, we have no substantive basis to turn the matter aside on this basis. (See Third Division Award 26389 which covers the same incident.)

On the merits of the dispute, the Carrier mainly relied upon the testimony of its witnesses. These persons testified that the Claimant was asleep while on duty. The Claimant's explanations did not overcome that direct testimony. When there is evidence of record to support the Carrier's

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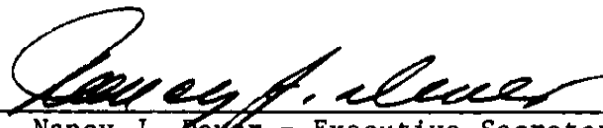
conclusions, as we find here, it is not our role to substitute opinion on credibility judgments. Accordingly, given that the Claimant has been assessed discipline in the past, which included a prior offense for sleeping, we have no proper basis to intrude with respect to the quantum of discipline assessed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1988.