

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 27926  
Docket No. CL-28020  
89-3-87-3-577

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(The Atchison, Topeka and Santa Fe Railway Company

PARTIES TO DISPUTE: "Claim of the System Committee of the Brotherhood (GL-10198) that:

(a) Carrier violated the Agreement at Topeka, Kansas, by removing Sterling Brooks Sr. from its service as result of formal investigation held on July 1, 1986, and

(b) Sterling Brooks Sr. shall now be restored to service with Carrier with all rights unimpaired and with pay for all time lost beginning July 1, 1986."

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.

Prior to the occurrence giving rise to the dispute herein, Claimant, with a seniority date of May 22, 1977, was regularly assigned as janitor at Topeka, Kansas, hours 5:00 P.M. to 1:00 A.M.

On June 25, 1986, Claimant was notified to attend formal investigation on July 1, 1986, in connection with his alleged sleeping on duty and inattentiveness to duty on June 19, 1986, in possible violation of Rules 14, 15, 16 and 17 of Carrier's General Rules for the Guidance of Employes. On June 30, 1986, a corrected notice was sent correcting the date of alleged violation to June 18, 1986.

The Investigation was held on July 1, 1986, as scheduled. A copy of the transcript of the Investigation has been made a part of the record. Rules 14, 15, 16 and 17 of Carrier's General Rules for the Guidance of Employes, referred to in the notice of June 25, 1986, were read into the Investigation, are set forth in the record before the Board, and will not be repeated here.

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We have reviewed the transcript of the Investigation and find that substantial evidence was adduced that Claimant was sleeping on duty on June 18, 1986. Claimant's contention that he was feeling ill and decided to lie down for a few minutes is not persuasive.

Sleeping on duty is usually considered an offense warranting dismissal. (Third Division Awards 25419, 25154.) The Board also notes that Claimant was disciplined on two prior occasions for sleeping on duty. It is apparent that the prior discipline did not have the desired effect. An employee's prior record may properly be considered in arriving at the discipline to be imposed for a proven offense.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deve Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.