

Award No. 33982
Docket No. MW-34470
00-3-98-3-105

The Third Division consisted of the regular members and in addition Referee Stephen B. Rubin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Southern Pacific
(Transportation Company (Eastern Lines)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension assessed Bridge Tender B. P. Andras for allegedly being asleep on duty on September 30, 1996 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement (System File MW-97-75/1046839D SPE).**
- (2) Bridge Tender B. P. Andras shall now be allowed one hundred seventy-six (176) hours of pay at his straight time rate, his record cleared of the charge and have the twenty (20) days held out of service applied to his vacation qualifications."**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

At the October 22, 1996 Investigative Hearing the Claimant was charged with violation of Rules 1.6, 1.9 and 1.11, which prohibit misconduct, willful disregard of duty or negligence, indifference to duty, subjecting the Carrier to criticism and sleeping on the job. On November 8, 1996 the Claimant was found to have violated all three Rules and was assessed a 30-day suspension.

The Organization contends that the Claimant was denied a fair Hearing in that witnesses on his behalf were not made available. It also alleges that the charge was not proven. No one saw the Claimant asleep at the time in question. The charge relies on hearsay evidence. There was water traffic which had the right of way at the time, it takes at least three minutes to close and secure the bridge and, to the extent that there was a delay in moving the Amtrak train over the bridge, it was due to that cause only. The Organization further contends that the Carrier had to blame someone because of Amtrak's protest at the delay and the Claimant is the scapegoat. It further states that the Carrier had to have doubts about the facts; otherwise, the discipline would have been greater.

The Carrier contends that the circumstantial evidence is overwhelming that the Claimant was inattentive to duty due to sleeping on the job and that the discipline was fully warranted, even lenient.

On September 30, 1996 the Claimant was assigned to work at the Berwick, Louisiana Bridge. At approximately 4:59 P.M. the Amtrak train cleared the Bayou Bluff Bridge, 7.2 miles away. At that time there was water traffic and the bridge was open. There was evidence that the Amtrak train attempted without success to contact the bridge by radio when it left Bayou Bluff. The Bayou Bluff Bridge Tender was also unsuccessful in his several attempts to reach the Claimant by telephone. He testified that he could hear the Amtrak train's calls to Berwick on his radio. The Amtrak train was forced to stop when it reached Berwick. It began blowing its horn. An Assistant Bridge Inspector arrived at the bridge, noted the situation, knocked on the door and noticed that the blinds were closed. After a time, the Claimant opened the door and said "I didn't know Amtrak was there; I must have fallen asleep." The Supervisor did not see the Claimant, awake or asleep. At the Hearing the Claimant stated that he had left the bridge shack to use the portable toilet outside, that he was unable to close the bridge until the Coast Guard had suspended water traffic, that the bridge was closed as soon

as the tow cleared the bridge, that he was not asleep and that his remark to the Assistant Bridge Tender was only sarcasm. The Coast Guard was contacted at approximately 5:17 P.M. The Amtrak train proceeded after water traffic was suspended and the bridge was closed and secured.

There is no support for the Organization's contention that the Claimant was denied a fair Hearing. The allegation is that fellow Bridge Tenders were not made available at the Carrier expense. The Bayou Bluff Tender was made available and testified. There is no showing that the other Tenders had relevant and material evidence although one of them was allegedly present when the Amtrak Engineer gave his account of the events. There is no indication that he was in earshot when the Amtrak Engineer made his statement. The Claimant or the Organization could have arranged for the attendance of other witnesses at their own expense.

The authority cited by the Organization is inapposite. The Carrier did not fail to call witnesses who were directly involved in the incident. Although the allegation was denied there was substantial evidence to support it.

Imposition of discipline here does not depend solely on hearsay evidence. There is abundant evidence that the Claimant was inattentive to duty. He also admitted that he must have fallen asleep. Credibility resolutions are not for the Board to resolve. The only hearsay was that the Amtrak train attempted without success to contact the bridge from approximately seven miles away. That the Bayou Bluff Tender was unable to contact the Claimant, that the Amtrak train was blowing its horn without response, that the Claimant failed to respond immediately to the knock on the door and that the blinds were closed was proved and not disputed. The admission of sleeping was not denied. There is a reasonable inference that the water traffic could have been suspended and the bridge closed much sooner had the Claimant been attendant to duty. There is substantial support for the proposition that his inattention was due to sleeping. The discipline was reasonable. As the Carrier points out, sleeping on the job warrants such discipline, if not more.

The claim will be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 28th day of March, 2000.