

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36879
Docket No. CL-36892
04-3-01-3-440**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Intermodal Terminals, Inc. (former CSX/Sea-Land
(Terminals, Inc. - Fruit Growers Express Company)**

STATEMENT OF CLAIM:

**“Claim of the System Committee of the Organization (GL-12758)
that:**

- (a) The Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of dismissal on Ms. Antoinette Pannell on August 24, 2000.**
- (b) Claimant be restored to service with seniority and all other rights unimpaired and she be compensated for wage loss sustained in accordance with the provision of Rule 43(f).”**

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.

As a result of charges dated July 17, a Hearing held on August 11 and by letter dated August 24, 2000, the Claimant, a Clerk at East St. Louis, was dismissed for sleeping on duty, being on duty in a position conducive to sleeping and dereliction of duty.

Substantial evidence developed during the Hearing shows that while on duty on July 15, 2000, at approximately 3:00 A.M., the Claimant was observed with her head laying on the steering wheel of a Carrier vehicle and that a driver waited over 20 minutes at the office and that no one had shown up to check him in. Substantial evidence, therefore, supports the Carrier's position that the Claimant engaged in misconduct as charged.

With respect to the amount of discipline, we do not find that dismissal was arbitrary. We recognize that in assessing the discipline of dismissal in this case, the Carrier relied upon a 30-day suspension for the same misconduct on June 13, 2000, and that in Third Division Award 36878 issued this date we rescinded that disciplinary action because of an inadequate transcript. Ordinarily, we would be inclined to reduce a disciplinary action which relies on prior discipline which was rescinded. However, as shown in Third Division Award 36880 also issued this date, the Claimant was again found to have engaged in the same misconduct on yet another date.

The purpose of discipline is to send a corrective message to an employee that the employee must comply with the Carrier's Rules. The Claimant does not seem to understand that she cannot sleep while on duty and we are of the opinion that reducing the discipline in this case would not get that message through to the Claimant. Reducing the discipline in this case would serve no purpose. Dismissal was, therefore, not arbitrary.

AWARD

Claim denied.

Form 1
Page 3

Award No. 36879
Docket No. CL-36892
04-3-01-3-440

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 25th day of February 2004.