

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43358  
Docket No. MW-44088  
19-3-NRAB-00003-160504**

**The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Dakota, Minnesota & Eastern Railroad Corporation**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [dismissal] imposed on Mr. R. Buchholz by letter dated February 17, 2015 for alleged violation of General Code of Operating Rules (GCOR) 1.11 Sleeping, GCOR 1.11.1 Napping and the Canadian Pacific Policy on Use of Electronic Devices, Policy H&S 4320 in connection with a formal Investigation held on January 19, 2015 was on the basis of unproven charges, excessive and in violation of the Agreement (System File J-1534D-402/8-38 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Buchholz shall be reinstated to service with seniority and all other rights unimpaired, have his record cleared of the charges leveled against him and be compensated all lost time, including months of service credit with the Railroad Retirement Board, until he is returned to work.”**

**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.

The Claimant was disciplined for violating Carrier rules prohibiting sleeping and/or watching TV while on duty.

Our review of the record does not reveal any procedural shortcomings in the Investigation process or handling of the matter on the property. Turning to the merits, the record establishes that Carrier rules prohibit the use of a TV and sleeping while on duty.

On January 7, 2015, the Claimant's supervisor made an unannounced visit to the Claimant's work location during his on-duty workshift shift as Sebula Bridge Tender. According to the supervisor's testimony, he found a TV on and the Claimant asleep in a chair reclined with a blanket. The Claimant maintained he was on his lunch break. The Claimant was assigned to work a shift of eight-straight hours that is not broken with an unpaid meal period. Thus, he is permitted to eat his lunch while on duty.

However, the applicable GCOR rule prohibits sleeping or napping on duty. The rule goes on to provide as follows:

“\*\*\* Employees reclined with their eyes closed will be in violation of this rule.”

In addition, by his own testimony, the Claimant acknowledged that watching TV violated the applicable rule prohibiting such activity.

The record also establishes that the penalty of dismissal fully in compliance with the Carrier's discipline policy. Previous infractions placed the Claimant at the point in the policy where his dismissal was the appropriate next step.

Given the state of the record, we find the Carrier's disciplinary action is supported by substantial evidence. As a result, the claim must be denied.

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**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 14th day of December 2018.