

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43997
Docket No. MW-45376
20-3-NRAB-00003-190195**

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

**(Brotherhood of Maintenance of Way Employes 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 Carrier’s discipline [twenty (20) day suspension to be served without pay] of Mr. B. Schrader, issued by letter dated September 29, 2017, in connection with allegations that he was observed sleeping in the Clinton Depot on the afternoon of July 29, 2017 was unjust and in violation of the Agreement (System File RI-1734D-804/USA-BMWED_DM&E-2018-00001 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Schrader shall have the discipline removed from his record and be compensated for all time lost which includes any days and overtime missed as a result of the improper suspension.”**

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 incident precipitating this claim arose on July 29, 2017. On that date, a Carrier officer observed Claimant B. Schrader allegedly sleeping “in a darkened room with shades pulled, hunched over with his eyes closed while sitting in front of a computer that had the monitor off due to inactivity.” As a consequence of that observation, on August 8, 2017, the Carrier sent a notice of investigation to the Claimant directing him to appear for an investigation for the following purpose:

“... to determine the facts and circumstances and to place responsibility, if any, in connection with you allegedly being observed sleeping in the Clinton Depot on the afternoon of July 29th, 2017. . . .”

A formal investigation was held on August 30, 2017. Following that investigation, in a letter dated September 29, 2017, the Carrier notified the Claimant that he had been found guilty as charged and was assessed a penalty of 20 days actual suspension. The Organization filed a claim on Mr. Schrader’s behalf protesting the discipline on October 11, 2017. The Carrier denied that claim on November 28, 2017. The Organization appealed that denial on January 22, 2018, and that appeal was denied as well. The matter was then progressed in accordance with the Parties’ Agreement and is properly before this Board.

The Carrier asserts, at the outset, that the Claimant was afforded a full and fair investigation. It notes that the details in the charging letter were sufficiently specific for Claimant and his representative to mount an informed and thorough defense. The Carrier also maintains that the testimony by the Carrier officer is consistent and without contradiction. Based upon his clear testimony, the Carrier proposes, it is evident that the Claimant was hunched over his desk in a darkened room, with his eyes closed, and that the monitor on his computer did not come back on until the Claimant awoke and moved the mouse to activate the screen. It also points out that the Hearing Officer’s determination of credibility in this matter should be left undisturbed, since the Carrier witness had no motivation to lie, and the Claimant’s excuse that he was “checking his e-mail” does not jibe with the fact that the Claimant’s computer screen was off at the time he was discovered. Accordingly, the Carrier asks that the instant claim be denied in its entirety.

For its part, the Organization contends that the Carrier has not met its burden of persuasion in this case. It points out that it is clear from the transcript that the Claimant was not in a reclined position. Moreover, the Organization asserts, the Claimant's defense that he left the room dark so he could see his computer screen without glare is not in any way unreasonable. Thus, the Organization argues, the hearing officer's determination of credibility is biased and flawed, and the instant claim should be sustained in full.

The Board has reviewed the transcript in this case as well as the attendant documentary evidence included in the investigation. At bottom line, we do not find that the hearing officer's determination that the Carrier witness was more credible than the Claimant is unfounded. There is no dispute that Claimant's computer screen did not come to life until the Carrier witness walked into the room and alerted Claimant to his presence. That alone throws into question the Claimant's claim that he was "checking his e-mail." In sum, the Board finds that the Carrier has, in this instance, more than met its burden of persuasion that the Claimant was not awake when the Carrier officer encountered him in his darkened office. Therefore, the instant claim is 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 5th day of March 2020.