

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45337
Docket No. SG-47563
25-3-NRAB-00003-220857**

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Canadian Pacific Railway**

STATEMENT OF CLAIM:

“Claim on behalf of L.G. Downs, for reinstatement to his former position with any reference to this matter removed from his personal record; account Carrier violated the current Signalmen's Agreement, particularly Rule 32, when it assessed the harsh and excessive discipline of dismissal to the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an Investigation held on August 9, 2021. Carrier's File No. 2021- 00024578, General Chairman's File No. 2021-00024578, BRS File Case No. 5514, NMB Code No. 103 - Out-of-Service Discipline: Safety/Operating Rules.”

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.

On July 30, 2021, Claimant L. G. Downs was employed as a Signal Maintainer in St Paul, Minnesota. Two company managers were driving in their company vehicle

when they saw a company truck pulled up by a bungalow on an abandoned line. One of the managers saw someone in the truck who appeared to be sleeping, so he pulled around the corner and parked. The managers left their vehicle and approached the truck, where they saw the Claimant inside with his head back against the headrest. After observing the Claimant for some time, one of the managers took a picture of him. They then knocked on the window of the truck, and the Claimant sat up and looked over. When they talked to the Claimant, he said he wasn't sleeping, but that he had been meditating.

By letter dated July 30, 2021, the Claimant was notified to attend a hearing to develop the facts and place responsibility, if any, in connection with his allegedly sleeping while on duty during the incident described above. The notice indicated possible violations of GCOR 1.1.2 – Alert and Attentive and GCOR 1.11 - Sleeping.

The hearing was held August 24, 2021, at which the managers testified regarding their observations of the Claimant when they saw him in his company truck and that he had said he had just finished lunch and was meditating. The Claimant denied having been asleep, testifying that he had been praying and meditating while he was on his lunch break, consistent with a 12-step recovery program and stress treatment. Following the hearing, the Claimant was found to be in violation of the cited rules, and by notice dated August 24, 2021, in consideration of his discipline record, he was dismissed from service.

The Organization submitted the instant claim, which the parties handled on the property according to the applicable agreement. The matter now comes to us for resolution.

The Organization contends that the Carrier did not meet its burden of establishing with substantial evidence that the Claimant was in violation of the cited rules. It states that the Claimant is contractually entitled to a 20-minute lunch break, and it asserts that it was his right to use that time for his health and welfare. The Organization argues that at no point was it established that the Claimant was on-duty or sleeping, and that he could not be in violation of GCOR 1.11, which prohibits employees from sleeping “while on duty.” It also contends that the Claimant’s seat was not reclined, as confirmed by the photographs submitted by the Carrier.

The Organization points to the Claimant’s testimony that he has a daily routine to assist in addressing a disease, which includes prayer and meditation to help maintain his mental health. It notes his testimony that he keeps a rigid schedule and that on the

date in question, he had to take his lunch later than usual. It adds that the Carrier witness confirmed there is no set lunch time for the Claimant, and that he can choose when to take it. The Organization submits that the Carrier failed to establish when the Claimant began his meal period, and that it cannot therefore determine when he would return to duty.

The Organization states that the Carrier has not supplied actual evidence to support the charges, and it asserts that the Carrier's case is based only on speculation. It notes the Claimant's testimony that Carrier managers were aware of his practices, and it posits that he was not trying to deceive or defraud the Carrier when he used his allotted mealtime to attend to his mental health. The Organization avers that evidence to support the charges is lacking, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment, stating that the record contains substantial evidence to support the finding of guilt. It points to the testimony of the managers who observed the Claimant sitting motionless in his truck with his head back against the headrest. It notes that the managers were outside the truck for at least a couple minutes discussing the matter, but that the Claimant never responded until one of them knocked on the window. The Carrier adds that the Claimant did not dispute that his eyes were closed, and it submits that the Claimant surely would have noticed the managers if he had not been asleep.

The Carrier also points to the manager's testimony that the Claimant said he had just finished his lunch break, and it argues that under the timeline described by the Claimant, his lunch break would have been over before the managers found him. It states that, regardless of whether the Claimant was on a lunch break, sleeping on company property is not permitted, citing prior awards which have reached that conclusion.

With respect to the discipline assessment, the Carrier states that the Claimant's sleeping while on duty is equivalent to stealing time, and that it constituted a Major offense under its Hybrid Discipline and Accountability Guidelines. The Carrier states that there was nothing arbitrary or capricious about the assessment here. It cites prior awards which have upheld significant discipline for sleeping violations, and it notes that this infraction was the Claimant's second Major offense in less than three months. The Carrier concludes that the assessment was consistent with the seriousness of the offense, with the Claimant's discipline record, and the discipline guidelines, and it requests that the claim be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Here, we believe the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that the Claimant was sleeping in violation of the cited rules when the managers discovered him. The fact that the managers stood outside the vehicle for some time, discussing whether to take a picture, supports the conclusion that the Claimant was indeed asleep at the time.

While the Organization posits that the Claimant could only be sleeping under GCOR 1.11 if it was established that he was "reclined with [his] eyes closed," we do not read that rule the same way. The rule specifically states that "Employees must not sleep while on duty . . ." We do not believe that the subsequent reference that employees reclined with their eyes closed will be in violation of the rule means that is the only way to establish if someone is sleeping. It appears to us that the second phrase was merely an example included to address a potential defense from someone found reclined with their eyes closed who might say that they were not actually sleeping while in such a posture. It seems clear to us that a person can be sleeping in other postures, and that being in a reclined position is not the only time someone could be sleeping.

Although the Claimant denied having been asleep, we think his testimony, when considered against the testimony of the managers who found him and the photographic evidence, raises a credibility issue. The Claimant's production of documentation regarding his recovery efforts and treatment to support his version of events is noteworthy, but as an appellate body, we are not in position to overturn a credibility determination made on the property.

Having found that the rule violations were established, we turn to the level of discipline assessed. The Carrier has every right to expect strict compliance with rules regarding sleeping on duty, which is supported by numerous prior awards. In this case, however, we do find that there are some mitigating circumstances, including the documentation presented by the Claimant regarding his treatment program. We therefore find that the Claimant should be given one additional opportunity to continue

his career, and that he should be returned to service with seniority intact, but without pay for time out of service. The Claimant should be aware, however, that a similar outcome is unlikely in the event of future infractions, and that he should govern himself accordingly with respect to his treatment needs while on duty.

AWARD

Claim sustained in accordance with the findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of October 2024.