

AWARD NO. 4

Case No. 4

Organization File No. A090707

Carrier File No.

PUBLIC LAW BOARD NO. 7460

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION
)
TO)
)
DISPUTE) PADUCAH & LOUISVILLE RAILWAY

STATEMENT OF CLAIM:

1) The discipline (dismissal) imposed upon Mr. C. Croghan by letter dated May 22, 2009 for alleged violation of P&L Operating Rules A, B, H and R in connection with charges of allegedly refusing to attempt to secure another track warrant at the request of E 80 Plus Contractors for the purpose of completing their work and in connection with a report of allegedly sleeping while on duty at approximately 1600 hours on February 5, 2009 was arbitrary, unwarranted, on the basis of unproven charges and in violation of the Agreement.

2) The appeal as presented by Vice Chairman T. Petty to Assistant Vice President - Transportation and Labor G. James on July 7, 2009 shall be allowed as presented because said appeal was not disallowed in accordance with Rule 31.

3) As a consequence of the violation referred to in Parts (1) and/or (2) above, the appeal shall be allowed as presented and Mr. C. Croghan shall receive the remedy prescribed by the parties in Rule 30(g).

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated December 16, 2010, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

This case is related to Case No. 3 before this Board, decided in Award No. 3. This case arose on the same day, February 5, 2009, while Claimant was performing flagging service for a bridge contractor. As their track warrant was expiring, it became apparent to the contractor that additional time would be needed to complete the work. According to the Carrier, the contractor's Field Superintendent, Robert Peterson, went to Claimant's vehicle to request additional time. He reported to the Carrier that he found Claimant sleeping. He also said he observed that Claimant's gloved hand was holding a soda can and secured to the vehicle's steering wheel with a Velcro strip. He knocked on the window, waking Claimant, and asked him for additional track time, but was told that he could not get additional time and that he would have to "wrap it up for the day." Peterson then contacted Claimant's supervisor, Project Engineer Daniel DeJarnatt, who then told Claimant to contact the dispatcher to obtain the additional time for the contractor to finish its work. Peterson subsequently prepared a written statement for the Carrier, describing the incident.

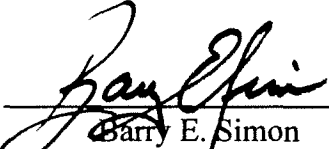
Claimant was consequently directed to attend a formal investigation at which he was charged with refusing to attempt to secure the track warrant extension and sleeping on duty. Peterson attended the investigation and gave testimony consistent with his written statement. DeJarnatt also testified that he interviewed Claimant, who admitted to him that he had been sleeping. Claimant testified that he had already requested an extension of the track warrant because he could see that the work would not get finished. Claimant denied he was sleeping when Peterson approached his truck, but explained, "I was deeply in thought waiting for the dispatcher to call me back for getting my paperwork so we could get back to work." Claimant additionally denied he had told DeJarnatt that he had been sleeping. Following the investigation, Claimant was dismissed from service.

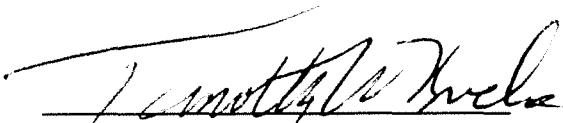
As in Case No. 3, both the Carrier and the Organization have raised procedural objections with regard to the handling of the initial claim. The facts and arguments surrounding the initial filing and denial of this claim are identical to those raised in Case No. 3, and we dismiss them for the same reasons cited in Award No. 3.

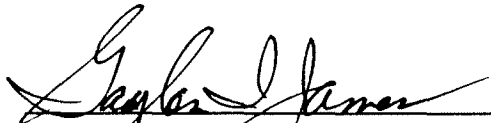
Although Claimant has denied the allegations of the contractor's superintendent, we find there is substantial evidence in the record to support the Carrier's charge against him. When there are conflicts in the testimony of witnesses in a disciplinary investigation, it is not the role of an arbitral tribunal such as this to reweigh the evidence. Credibility determinations are made by the hearing officer, and we will overturn such decisions only when we are satisfied that the decision was made in an arbitrary or unreasonable manner. We can make no such determination in this case.

With regard to the level of discipline imposed, we agree with the Carrier that sleeping on duty is a serious violation of the rules, particularly when the employee is on the job for the purpose of performing flagging duties. Additionally, his handling of the contractor's request for additional track time was not only inappropriate, but would have resulted in additional costs to the Carrier if it was necessary for the contractor to resume its work at a different time rather than complete it that day. As it is, the need to wait for the superintendent to contact Claimant's supervisor, who then had to contact Claimant, resulted in a one hour delay to the work. Under the circumstances, we do not find the discipline imposed to be excessive. The Agreement was not violated.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


Timothy W. Kreke
Employee Member


Gaylon L. James
Carrier Member

Dated: July 24, 2011
Arlington Heights, Illinois