

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. That the Carrier violated Articles V and VI of the Agreement by unjustly assessing Colorado Division Bridge and Building Mechanic David Lucero's personal record thirty (30) demerits for allegedly sleeping on duty May 16, 1979 and as a result thereof dismissing Mr. Lucero from service July 1, 1979 for allegedly accumulating excessive demerits on his personal record and failing to properly disallow claim filed June 21, 1979.

2. That the Carrier now reinstate Mr. Lucero to service with seniority, vacation, all other benefit rights unimpaired and pay for all wage loss beginning July 7, 1979 continuing forward until his reinstatement.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with sleeping while on duty at Bridge 636.5, Denver District, at 10:30 a.m. on Wednesday, May 16, 1979. An investigation was held on May 24, 1979 to determine the facts and place the responsibility. Pursuant to the investigation, the claimant's personal record was assessed thirty demerits.

As a result of the thirty demerits the Carrier dismissed the claimant from service on July 6, 1979 for an accumulation of excessive demerits. On June 26, 1979 the Carrier notified the claimant and the General Chairman that the decision to remove the claimant from service had been changed, and the claimant was being assessed thirty demerits for violation of Rules 16 and 17. Originally the Carrier had dismissed the claimant from service pursuant to the investigation.

The Organization filed a claim requesting removal of the thirty demerits from the claimant's personal record. The Organization contends that the evidence does not support a finding that the claimant was sleeping. The Organization contends that it is impossible to observe an employee's eyes through the dark lens safety glasses which are provided by the Carrier. The Organization contends there is no other evidence except the one witness who testified he saw the claimant's eyes closed through his glasses.

Evidence indicates that the assistant general foreman of B&B Water Service observed the claimant lying down on the cab of a pile driver. He testified that he observed the claimant between two and five minutes. He further testified that he spoke to the claimant in a normal tone and that the claimant responded immediately.

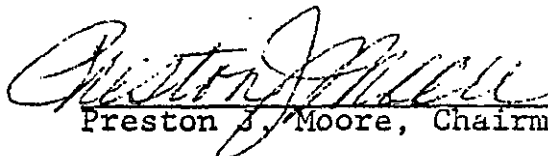
The assistant general foreman further testified that he stood over the claimant for approximately twenty to thirty seconds and that he observed the claimant's eyes closed. He testified that he said: "Wake up, David, and go back to work" and the claimant got up and went back to work.

This witness also testified that it is possible to see through the colored lenses, and it is very easy in the sunlight to determine whether a man's eyes are open or closed. He further testified he had a conversation with the claimant about thirty minutes later, and the claimant did not state that he was not sleeping. He asked the claimant, and the claimant responded that he had no excuse but did not state he was not asleep.

Another employee, a B&B carpenter, testified that he saw claimant lying on the back of the pile driver sleeping for approximately forty-five minutes.

After carefully examining the entire transcript of record and the evidence at hand, it appears to the Board that the evidence is sufficient for the Carrier to make a finding that the claimant was guilty. There is no justification to set aside the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member