

PUBLIC LAW BOARD NO. 1760

Award No. 71

Case No. 71

File: MW-STL-83-1 (Hitchcock)

Parties Brotherhood of Maintenance of Way Employees  
to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: Appeal from the discipline assessed T. L. Hitchcock  
by letter dated November 16, 1984, as a result of  
investigation held November 2, 1984.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was notified to attend a formal investigation to be held November 2, 1984.

"...to determine your responsibility in connection with your being asleep while on flagging duty at Taylor Avenue on the U.D. Line in St. Louis, Missouri at approximately 10:38 a.m. on October 10, 1984, and you being insubordinate to Crossing Gang Foreman W. R. Burg at the above time, place, and date in that, you were observed asleep in the front seat of an automobile beside the track and when awakened by Crossing Gang Foreman Burg you failed to get out of your automobile to perform flag in duties as instructed..."

Claimant, on October 10, 1984, was assigned as a Flagman to provide flagging protection for construction personnel working on a tunnel near Barnes Hospital located on the U.D. Line, St. Louis, Missouri. Barnes Hospital is located approximately 400 to 500 feet west of Taylor Avenue. He had held that job for at least a week and worked under the jurisdiction of Foreman J. Davis.

During the morning of October 10th, Foreman W. R. Burg, who was in charge of a Crossing Gang that were working east of Taylor Avenue on the U.D. Line, noticed Claimant sitting in his personal car parked at Taylor Avenue and was not outside performing flagging. Burg walked down about 10:30 AM to see Claimant in his car. He asserted that he found Claimant in a slumped position with his head tilted back and his eyes closed. Burg stated that he tapped on the top of Claimant's car and asked several times "Are you sleeping?" Thereafter, Claimant slowly opened his eyes and said "No." Said Foreman told Claimant that the Pettibone Speed Swing (off track crane) was working on the main line, that the crossing gates at Taylor Avenue kept coming down and that he needed Claimant to flag the road crossing at Taylor Avenue. Foreman Burg turned and walked back towards his gang located approximately 160 feet east of this and Burg claimed that he turned around and saw that Claimant had not gotten out of his car. Claimant did not leave his car until after 12:45 PM when the first train scheduled to come by, a switch engine, did so.

The record reflects that there was no train presence due in the vicinity in the morning until arrival of a switch engine which did arrive after lunch. Claimant did remain in his automobile, after being instructed by the Foreman from 10:35 a.m. until about 12:45 p.m. Foreman Burg's Gang members, at times, had to leave their work, during said period in order to protect the Taylor Avenue crossing.

The Board finds that there are peculiar and mitigating circumstances in this record in the light of which Claimant will be restored to service with all rights unimpaired but without pay for time out of service subject to passing the necessary return to service examinations.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

M. A. Christie  
M. A. Christie, Employee Member

S. C. Lyons, Carrier Member  
S. C. Lyons, Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member

*Carrier  
dissents  
to  
reinstatement*