

Award No. 21

File No. MW-LP-77-105

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement of Claim The Brotherhood requests that Claimant Charles A. Moss be restored to service of the Norfolk and Western Railway with seniority, vacation and all other rights unimpaired, and paid for all time lost.

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 March 1, 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 Drawbridge Tender was dismissed as a result of his having been guilty of a violation of Operating Rule 427-A in that he was observed to have been asleep while on duty as first trick Drawbridge Tender, Eastern Branch Drawbridge, Norfolk, Virginia, at approximately 10:28 AM on September 20, 1977, and for his violation of Operating Rule 654 in that he failed to protect the bridge from trespassers at approximately 10:28 AM on September 20, 1977.

Claimant was accorded a formal investigation, on October 13, 1977, in connection with the incident that occurred on September 20, 1977. As a result thereof Carrier concluded that Claimant was guilty of the offenses as charged.

Operating Rule 427-A reads:

"Lying down or in a slouched position with eyes closed or with eyes covered or concealed will be considered as sleeping."

Operating Rule 654 provides:

"Bridge watchman...must not permit unauthorized persons to trespass upon the bridge."

The Board finds that Claimant was accorded all the rights proscribed in Rule 33 - Discipline and Grievances. .

There was sufficient evidence adduced to support the conclusions reached by Carrier as to Claimant's culpability in violation of the rules as charged. Here, the record reflects that Carrier's Assistant Supervisor Bridge and Buildings was at the Drawbridge in question, on September 20, 1977. He discovered two boys walking out on the bridge. When said Supervisor walked up to and in to the Drawtenders House he found Claimant leaning back in the chair with his feet up on the stove with his eyes closed and his hands folded across his body. The Assistant Supervisor of Bridge and Buildings observed Claimant in this reclining position for a minute or two. He then struck the side of the metal locker whereupon Claimant opened his eyes. Claimant, at that moment in time admitted he did not see the boys on the bridge.

Claimant was told that he was being charged with sleeping on duty, as provided for in the Operating book of rules, whereupon he allegedly asked for "a break". Claimant was thereafter relieved from duty by another Drawbridge Tender

from the Eastern Branch Drawbridge.

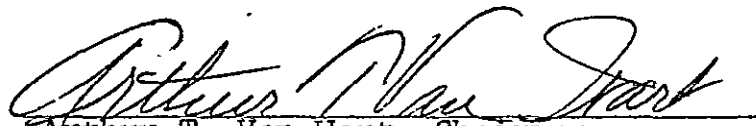
In the circumstances in this case we do not find the discipline assessed to be unreasonable. Here the record reflects that Claimant had previously served a sixty (60) day actual suspension for sleeping on duty on August 9, 1973, as well as having a thirty (30) day deferred suspension also for sleeping on duty on January 23, 1973.

In the circumstances this Claim will be denied.

Award Claim denied.


A. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979.