

PUBLIC LAW BOARD NO. 2556

Award No. 20

Case No. 29

Docket No. MW-377

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Southern Railway Company
Georgia, Southern and Florida Railway Company

Statement
of Claim: Claim on behalf of former B&B Mechanic James W. Henderson
that he be restored to service with seniority and other
rights unimpaired, and be paid for all time lost as a
result of his dismissal on September 25, 1981 for failing
to properly flag.

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 October 17, 1979, that it has jurisdiction of the
parties and the subject matter, and that the parties were given due
notice of the hearing held.

Claimant, on September 1, 1981, was assigned to and working with
Bridge and Building Gang No. E19R which was performing work on a trestle
at Mile Post V26.0 near Belton, South Carolina. The repairs required that
members of the gang and a large bridge hoist (crane) work out on the
trestle. Operating Rule 1507(b) requires that there be flag protection
provided in both directions in order to protect the track equipment
unless other means of protection have been arranged for.

Claimant was one of the employees assigned to provide flagging
protection. A Supervisor and a B&B Helper both found Claimant lying
down by the track asleep instead of providing flag protection.

Claimant was advised, under date September 3, 1981, to attend a
formal investigation:

"...charged with improper flagging, violation
of Rule 99, Rule 1507(b) and Standard
Procedure No. 140 - Live Flagging. At
approximately 9 A.M. September 1, 1981, you

were found lying down asleep on the inside of the curve of M.P. V26.5. You were supposed to be protecting bridge crew working with a bridge hoist on trestle at M.P. V26.0 from all eastbound movements."

Following the investigation Claimant was advised, under date of September 25, 1981, in part:

"The evidence in the above mentioned investigation is conclusive that you were asleep while performing flagging duties protecting Bridge Gang E19R at Mile Post V-26.0. Sleeping in the performance of flagging duty greatly endangered your fellow employees with serious injury or even death.

In view of the above violation you are permanently dismissed as a B&B employee of Southern Railway effective end of working day September 25, 1981."

Claimant's defense, in essence, was that while he was laying down he was not sleeping and that he only laid down because his side was hurting and that he had spoken to Supervisor Sheppard and B&B Helper Blythe when they walked up.

Claimant's perception of the facts differ markedly with that of Carrier's witnesses. Here, Carrier chose to believe the testimony of its witnesses. The record finds no abuse of such discretion.

There was sufficient evidence adduced to support the conclusions of guilt reached by Carrier.

The offense for which Claimant was charged, sleeping while on duty, is highly reflective of extreme negligence. It is a most serious offense with discharge generally assessed as discipline therefor. In the circumstances the Board finds no cause on this record to interfere therewith. This claim will be denied.

Award: Claim denied.


B. L. Hall, Employee Member


R. S. Spenski, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member