

PUBLIC LAW BOARD NO. 3558

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of System Machine Operator Zachary Smith for 120 hours pay at his straight time rate and the charge of violation of Company Rule M810 be removed from his record account suspended unjustly and not allowed a fair and impartial investigation."
(MW-84-125)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

On two separate occasions on August 6, 1984, Claimant was reported to have been observed by Carrier supervisory officials to be in a position of sleep while sitting in the cab of a crane he was assigned to operate. He was said to have been sitting with his hands folded, his head laying back on the seat and that his eyes were closed.

Although the Organization protests that Claimant was not asleep as alleged, it raises the threshold question that the Claimant was denied benefit of a due process hearing. In this respect, it urges that the hearing was prejudiced because the Carrier failed to call a witness.

In giving consideration to the nature of the Organization's complaint about the company hearing, the Board fails to find that the record established sufficient reason for the witness to be called, aside from the purpose of attesting to Claimant's use of eye drops on the date in question. However, this was not something which the Carrier was contesting. In this respect, the Carrier submits the mere fact Claimant had in his possession and may have used eye drops on the date in question did not serve to dismiss the findings of its supervisors that on at least one of the two reported occasions they found it necessary to awaken Claimant after he had reportedly been observed with his eyes closed for about five minutes.

As concerns the Organization's argument that five minutes would not have been an unreasonable period of time for medication to take effect, we do not find such assertion meritorious in the light of the supervisors having testified they had observed the Claimant to be asleep and that after approaching him that it was necessary they awaken him. Furthermore, we would think that after being admonished in the first instance with respect to sleeping on duty, and acknowledging to the supervisors his understanding with regard to the intent of Rule 810, for Claimant to again lay his head back and go off to sleep a short time later, it must be concluded that he was exhibiting a rather indifferent sense of responsibility to his job.

Insofar as Rule 810 is concerned, it reads in pertinent part as follows:

"Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed, will be considered sleeping."

Since the record as presented and developed shows the Carrier had just cause to find Claimant guilty as charged, we have no reason to modify or set aside the discipline as administered. It was not harsh or unreasonable, particularly when viewed in the light of a past disciplinary record, which shows Claimant to have been twice dismissed for rules violations, but then reinstated, in addition to being suspended and assessed demerits on two other separate occasions.

AWARD:

Claim denied.



Robert E. Peterson, Chairman
and Neutral Member



C. B. Goyne
Carrier Member



M. A. Christie
Organization Member

Houston, TX
February 4, 1986