

SPECIAL BOARD OF ADJUSTMENT  
PUBLIC LAW BOARD NO. 3729

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CONSOLIDATED RAIL CORPORATION	*	
"CARRIER"	*	
	*	
-and-	*	CASE NO. 14
	*	
BROTHERHOOD OF MAINTENANCE OF	*	AWARD NO. 12
WAY EMPLOYEES	*	
"ORGANIZATION"	*	
	*	

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STATEMENT OF CLAIM

Claim of the Brotherhood (CP-1484-D) that:

- (a) The dismissal of Trackman D.L. Torbicki was without just and sufficient cause, in an arbitrary and capricious manner.
- (b) The Claimant, D.L. Torbicki, shall be exonerated of the charges and restored to service without loss of seniority, vacation rights, and all other benefits enjoyed by the Claimant prior to his dismissal, and shall be compensated for all lost wages.

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This claim arose when the Carrier charged D.L. Torbicki, hereinafter the Claimant, with sleeping while on duty. The specific charge, contained in a notice dated April 19, 1985, was as follows:

Your sleeping while on duty with the SC 480 Surfacing Gang at Wayneport, New York. This incident occurred on April 17, 1985 at 1:15 p.m. at approximately MP 358, Chicago Line, while you were assigned to operate Ballast Regulator BR 1264.

In connection with occurrence, you are charged with the violation of Rule E of the General Rules of ConRail Rules of the Transportation Department.

The hearing was held on May 9, 1985. The Claimant was present and represented by the Organization. By notice dated May 28, 1985, the Carrier notified the Claimant that he had been found guilty of the charge and assessed discipline of discharge. The above-quoted claim was then filed on behalf of the Claimant.

This Board heard oral argument concerning the claim on February 13, 1986. The Claimant was notified of the Board meeting by certified mail but did not attend.

The Claimant was a trackman. On April 17, 1985, the date of the alleged incident, he was assigned to operate a ballast regulator. At approximately 1:15 P.M., he was discovered sleeping in the ballast regulator operator chair. The machine was standing still but in an operating mode, with the engine running and lights on. When awakened and questioned, the Claimant said he was on his lunch break but could not recall when he started on the break. Later that afternoon the Carrier removed the Claimant from service.

#### POSITIONS OF THE PARTIES

The Carrier contends that there is substantial evidence in the record to support a finding of the Claimant's guilt. There is no evidence to support the Claimant's assertion that he was on lunch break. If he was, it would not excuse sleeping at the machine. As the Claimant received a fair hearing and the penalty of discharge is appropriate for the offense, the claim should be denied.


The Organization asserts that the claim has merit, as the Carrier has failed to establish that the Claimant was not resting on his lunch break. As the record does not establish that the Claimant was paid for the break, he was entitled to use the time to rest. Furthermore, the Carrier committed procedural errors, as there was no need to remove the Claimant from service and he did not receive a fair and impartial hearing.

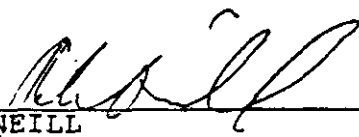
OPINION OF THE BOARD


The claim shall be denied. The record contains substantial, credible evidence to support the Carrier's finding that the Claimant was sleeping during working time. The penalty of discharge was not arbitrary, especially in light of the potential danger of falling asleep at the ballast regulator while it was running. The Carrier committed no procedural errors that warrant setting aside the discipline.

AWARD

Claim denied.

  
S.E. BUCHHEIT  
Neutral Member

  
R. O'NEILL  
Carrier Member

  
J.P. CASSESE  
Organization Member