

RECEIVED-DENVER
LABOR RELATIONS

SEP 18 89

PUBLIC LAW BOARD NO. 4104

Case No. 38

JMS		DWK	
RLI		EJK	
PARTIES TO DISPUTE:			
DHW		RIS	
WNS		DJA	

Brotherhood of Maintenance of Way
Employees

vs.

Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the
Brotherhood that:

1. The thirty (30) days suspension imposed upon Grinder Operator J.H. Schubert for alleged violation of Maintenance of Way Department Rule 502 and Burlington Northern Safety Rule 569 for sleeping on duty and failure to be alert and attentive to duties, was without just and sufficient cause and on the basis of unproven charges. (System File Weld/Gr. GMWA 85-3-15).

2. The Claimant's record shall be cleared of the charges against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant is regularly employed as a Grinder Operator assigned to Welding Gang No. 30 under supervision of Welder J.L. Strong.

On May 30, 1984 an investigation was held for the purpose of ascertaining the facts and determining his responsibility for his alleged sleeping on duty and his failure to be alert and attentive to his duties.

As a result of the investigation, Claimant was suspended for thirty days.

The Organization contends that Carrier's decision to suspend Claimant for thirty days is improper. It maintains that testimony contained within the transcript does not support Carrier's allegation that Claimant was sleeping. It argues that the testimony of Roadmaster Veitz reveals that he assumed that Claimant was sleeping because he was in a slouched position in the front

seat of the truck. It points out that the observation of Roadmaster Veitz was made from a truck operated at a speed of 10 miles per hour at a distance of at least 20 yards from the gang truck. It further argues that at no time did Roadmaster Veitz approach Claimant or his supervisor, Welder Strong, as to his contentions. The Organization further maintains that Claimant was sitting in the gang truck waiting for a train to pass, and not sleeping as alleged by Carrier. Thus, it asserts that an assumption by a Carrier official fails to meet the burden of proof that Claimant was sleeping on duty. It asks that the claim be sustained in its entirety.

Carrier argues that Claimant admitted in his own testimony that he was in a slouched position and was not alert and attentive to his duties. Although the Organization asserts that Claimant was waiting for train traffic, Carrier maintains that it does not relieve him from being alert and attentive to his duties nor does it allow him to sleep while under pay.

A review of the record evidence concludes that Claimant is guilty as charged. The testimony of Claimant establishes that he was sitting in a slouched position with his feet on a lunch pail. Rule 569 states the following:

"Employees must not sleep on duty. Lying down, or in a slouched position...is considered as sleeping".

Clearly, then, Claimant is guilty as charged. He was observed by a Carrier official to be in violation of the aforementioned rule while on duty and under pay. The discipline imposed by Carrier was

not arbitrary or capricious under the circumstances in this case. However, in the future, Carrier is to be advised that should an official observe such behavior by an employee, he or she must confront the employee to further substantiate any allegations that may arise.

However, in this instant case, Carrier has conclusively established Claimant's guilt of the charges. Accordingly, and for the foregoing reasons, the claim must fail.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934:

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

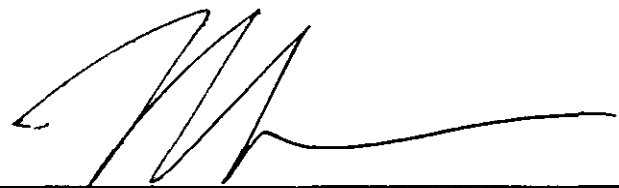
That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/5/89