

**BEFORE
PUBLIC LAW BOARD NO. 6054**

IN THE MATTER OF ARBITRATION BETWEEN:

THE NATIONAL RAILROAD PASSENGER)	
CORPORATION (AMTRAK))	AWARD NO. 8
)	CASE NO. 8
AND)	
)	
THE BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYEES)	

STATEMENT OF CLAIM

- (1) The dismissal of Foreman/Flagman Dan Mullen for his allegedly sleeping on duty on March 4 and 5, 2003, was without just and sufficient cause and excessive punishment.
- (2) Foreman/Flagman Dan Mullen shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated August 5, 1977; and has jurisdiction over the parties and the subject matter.

Grievant was employed by the Carrier since May, 1994, and was assigned as a Foreman/Flagman to provide flagging protection to a contractor on March 4 and 5, 2003, the dates giving rise to this claim. According to testimony in the record, he was observed by a manager and Inspector to be sitting in his automobile, giving every impression of being asleep on duty – even while a train passed over the tracks he was assigned to protect.

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On the following day, March 5, 2003, the same individuals testified that, once again, they observed the Grievant in his vehicle giving every impression of being asleep on duty. Later that day, a different company officer went to the work site to discuss these observations with the Grievant and found him giving every impression of being asleep on duty a third time. There is more than sufficient evidence that the Grievant was guilty of sleeping on duty.

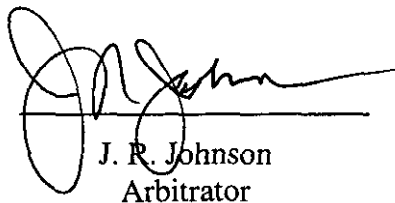
Sleeping on duty is a serious offense, and that offense is exacerbated by the fact that the Grievant's duties were to provide flagging protection to a work crew, and that a train came through the site without the crew having been given notice from the flagman. It is only through good fortune that serious injury or loss of life did not occur. The discharge was an appropriate penalty.

That being said, however, there are some mitigating factors that the Union urges us to consider. First, the union points out that the Grievant had nine years of prior service with an unblemished record. Second, it points out that the Grievant suffers from diabetes, had been working long days at that time, and was not in good physical condition at the time giving rise to the offense. He has since improved his condition and made other life-style changes. The union asks for a second chance under those circumstances.

Based upon those and other mitigating factors, the Board will order the Carrier to reinstate the Grievant to service with his seniority unimpaired, but without compensation for time lost.

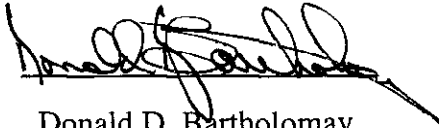
AWARD

The Grievant will be reinstated to service with his seniority unimpaired, but without compensation for time lost.

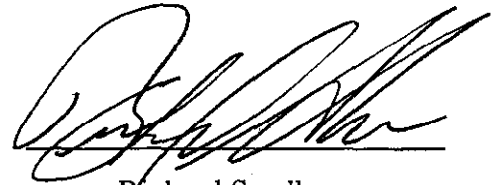


J. R. Johnson
Arbitrator

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Donald D. Bartholomay
Employee Member



Richard Sandler
Carrier Member

Dated: 9-22-04