

PUBLIC LAW BOARD NO. 6394

AWARD NO. 54

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Welder J.N. Guzzino for violation of Norfolk Southern Safety and General Conduct Rules on August 18, 2010 in connection with being observed in his assigned welding truck in a slouched position with his eyes concealed on 112th Street outside of Morgan Park Auto Service while on duty at approximately 3:30 P.M. and with failing to follow instructions in that, on August 18, 2010, he was instructed to weld a frog at Ashland Avenue and willfully failed to do so is unjust, unwarranted, excessive, and in violation of the Agreement (Carrier's File MW-DEAR-10-59-LM-320).
2. As a consequence of the violation referenced in Part 1 above, Mr. Guzzino shall be granted remedy in accordance with Rule 30(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

At the time in which the events leading to this case occurred, the Claimant was working as a welder in and around Chicago, Illinois. His normal working times were Monday through Friday, 8:00 A.M. to 4:30 P.M. with 30 minutes for lunch. On August 18, 2010 the Claimant attended various activities related to the Carrier's Safety Day Program. That afternoon, he attended a Carrier sponsored Safety Day lunch. Around 12:30PM the Claimant learned that a part was available to fix an ongoing heating and air

conditioning problem with his work vehicle, and received permission from his supervisor to take the truck to the repair shop and wait while it was repaired. Afterwards, the Claimant made the decision to observe the vehicle's blower in operation to make sure it worked properly (Transcript, p. 69) because in previous repair attempts the blower stopped working shortly after being fixed. At 3:00PM the repair shop contacted the Claimant's supervisor and informed that repair had been completed but the truck had not left the area. The Claimant's supervisor was unable to check on the situation personally so he dispatched two other supervisors to the area, who noted the truck was running with the Claimant and another employee in it and then confronted the Claimant about the situation. The Carrier charged the Claimant with sleeping while on duty and failure to follow instructions. An investigation was conducted into this matter including a hearing on September 24, 2010. On October 12, 2010, the Carrier informed the Claimant that he was found guilty of the charges and dismissed from service.

The Carrier argues that the Claimant failed to comply with instructions because his supervisor (Mr. Erickson) instructed him and another employee (Mr. Valentine) to go to Ashland Avenue and begin welding as soon as repairs to the vehicle were complete. Supervisor Ikstra testified that when he stepped up to the work truck he observed the Claimant sitting in a slouched position, his head down, mouth open, and his eyes concealed by dark glasses. Mr. Ikstra then opened the door to the Claimant's side of the truck to ask what he was doing, and observed him wake up and mumble "nothing" or something to that effect. The Carrier further argues that General Conduct Rule 26 only requires that the eyes be concealed, and while the Claimant was wearing company issued safety glasses there was no reason to do so while in the cab of a truck. The Carrier maintains that its dismissal was in accordance with progressive discipline, as the Claimant had three previous suspensions and two Letters of Counsel since he entered service on March 22, 2005.

The Organization contends that there is no evidence to support the Carrier's allegation that the Claimant violated General Conduct Rule GR-26 by being asleep on the job. Instead, the Claimant was awake and talking with the other employee in the vehicle. The Organization objects to the Carrier's allegation that the Claimant was asleep because he was wearing a dark pair of safety glasses issued by the Carrier and commonly used when operating machinery and vehicles. In addition, the Carrier did not explain how the Claimant failed to comply if he was just waiting to make sure the vehicle blower would not malfunction again. Even if the Claimant has some culpability, the Organization believes the punishment of dismissal is disproportionate with the offense and work history of the Claimant.

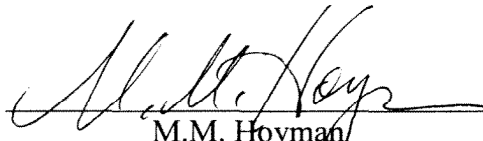
There are two events which led to the dismissal of the claimant: (1) failing to report to the Ashland Avenue site to weld immediately after having his work vehicle repaired and (2) sleeping in the work vehicle after it had been repaired. On the first matter, both the testimony of the Claimant's supervisor Mr. Erickson (Transcript p. 6) and the Job Lineup Form clearly establish the Claimant was to report to the Ashland Avenue site to weld. The Claimant testified that he made the decision to not report to the Ashland Avenue site to weld because he felt "...there just really wasn't enough time in

the day” and chose to not inform his supervisors of this decision or get approval for it (Transcript p. 54-55).


On the second matter, the Board finds that the testimony of Supervisor Ikstra to be a credible account of the events in this case. Supervisor Ikstra testified that he parked behind the Claimant’s vehicle and walked up to the Claimant’s door where he observed him in a slouching position with his head down – in other words, he appeared to be sleeping (Transcript p. 23). There is no reason we can find in the case record that would cause Mr. Ikstra’s testimony to be inaccurate. Furthermore, the record does not dispute that the Claimant was wearing dark safety glasses at the time he is accused of being asleep. There is no evidence in the record to support why the Claimant would need to wear these while observing the blower inside a vehicle cab. There is also no dispute that wearing dark glasses in such a circumstance is an obvious violation of General Regulation Rule 26, which states in part “An employee...with eyes concealed will be considered sleeping....”

In coming to its decision, the Board finally must note other aggravating circumstances in this case. At the time the incident occurred, the Claimant had approximately five years of service with the Carrier with six disciplinary actions on file – including two letters of counsel and a 24 day actual suspension. Given the level of seniority and the Claimant’s work record, dismissal in this case demonstrated an adherence to progressive discipline.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on January 31, 2012.