

PUBLIC LAW BOARD NUMBER 1837

Case Number 57

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The dismissal of Crossing Watchman C. K. Puentez was arbitrary and capricious, the decision being based on unrelated charges not cited by the Carrier prior to the hearing and not supported in the trial transcript..
2. Claimant Puentez should now be afforded the remedy of Rule 22(e).

FINDINGS: This Board, upon the whole record and all evidence, finds that:

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

Claimant was dismissed from duty following a hearing on the charge of sleeping on duty and while under pay at about 5:30 a.m. on July 2, 1979; such event purportedly occurred in the tower at Indianapolis Boulevard at the Carrier's Chicago Terminal.

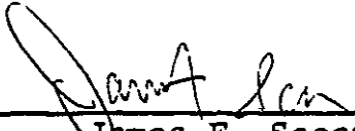
The Claimant was employed as a crossing watchman with some 15 years of service at that time.

The Organization's assertions to the contrary notwithstanding, the record supports the Carrier's version of events. We find nothing substantive in the record of the hearing to militate against such a conclusion. The fact that the Claimant may have earlier that morning observed the supervisors checking his truck does not lessen the potential that the supervisors observed him sleeping; indeed, by his own account the Claimant was in a chair with his hat pulled down to the bridge of his nose. One may reasonably wonder at such conduct on his part if he knew the supervisors were in the area and, given the unrefuted testimony that he had been observed in a sleeping position twice before within a month for which a discipline suspension had been assessed, his conduct on July 2, 1979, even by his own account was incredible. It is also pointed out that once a basis for discipline has been established by the incident in dispute, the extent of such discipline may be predicated upon a review of an employee's prior disciplinary and work record.

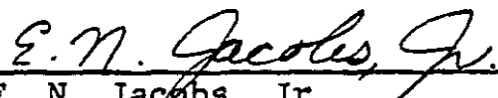
Sleeping on duty is a serious offense and while we are mindful that the Claimant had accumulated 15 years service prior to his dismissal, we find it beyond the province of this Board to disturb the Carrier's actions in this case. If the Claimant is to receive further consideration, it must come from the Carrier.

AWARD:


Claim is dismissed.



James F. Searce
Neutral Member



E. N. Jacobs, Jr.
Carrier Member



William E. LaRue
Organization Member

Dated March 27 1982 at Philadelphia Pa