

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad (former L&N Railroad)

STATEMENT
OF
CLAIM:

Flagman R. L. Williams shall be reinstated and compensated for all wage loss suffered.

FINDINGS:

On October 24, 1983, claimant was assigned to provide flag protection for a private contractor which was performing bridge construction work near Mile Post 81.6. There is substantial credible evidence in the record consisting in the main of testimony by Roadmaster Collins, that instead of being alert for train movements, claimant appeared to be asleep, sitting on the ground, with his head propped on his knees, between two pieces of heavy equipment. According to the testimony, claimant did not react when Mr. Collins shouted at him and did not raise his head until the contractor's foreman shook his leg several times. Mr. Collins testified that claimant's eyes had been closed and that he rubbed them a few times after he arose.

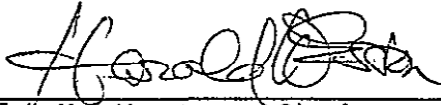
Claimant denied sleeping and testified that he sat down for a few minutes because he was "feeling a little poorly." He did not maintain any illness at the time of the incident, but subsequently submitted a doctor's note indicating that he had been examined and treated in Dr. William Brackett's office for "acute gastroenteritis" on the day in question.

We find no persuasive ground for substituting our judgment for that of Carrier in this matter. Its findings are supported by substantial and credible evidence.

In determining the measure of discipline, it was appropriate for Carrier to consider the sensitive nature of claimant's duties and the fact that he had previously been suspended twice for neglecting to perform his work in a proper manner. Carrier shoulders enormous responsibilities for safety and must be able to rely on its flagmen to be alert and provide vigilant protection.

AWARD: Claim denied.

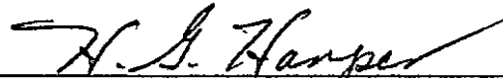
Adopted at Jacksonville, Florida, January 28, 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member