

PUBLIC LAW BOARD NO. 2774

Award No. 16
Case No. 24

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE The Atchison, Topeka & Santa Fe Railway Company

STATEMENT "1. That the withholding of and removal from service of Los Angeles
OF CLAIM Division Bridge and Building Painter J.I. Brooks was unjust.
2. That Claimant, J.I. Brooks should be reinstated to service with seniority, vacation, all benefit rights unimpaired, pay for wage loss and/or otherwise made whole."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees, within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Following an investigation held on August 18, 1980, Claimant was dismissed for violating Company rules by sleeping during his tour of duty on July 23, 1980. He had been charged with not only sleeping on duty but the use of alcoholic beverages just prior to reporting for duty on July 25, 1980. Carrier's conclusion following the investigation was that he was guilty of sleeping on his job and hence, the decision to dismiss followed.

Petitioner argues initially that Carrier withheld Claimant from duty prior to the investigation in violation of the Agreement. Section 2 of Article X of the Scheduled Agreement provides as follows:

"Section 2. It is understood that nothing in this Article will prevent the supervisory officer from holding men out of service where flagrant violations of Company rules or instructions are apparent, pending result of investigation which will be held within thirty (30) calendar days of date of suspension."

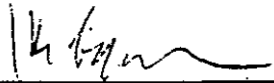
Petitioner argues that finding Claimant drinking beer and eating breakfast just prior to going to work at 7:50 a.m. July 25, 1980 in conjunction with his earlier alleged violation of sleeping on-the-job did not constitute a flagrant violation as that phrase is generally recognized in the industry. As an additional point, Petitioner argues that the discipline involved herein was harsh and arbitrary and was not appropriate in the light of the type of infraction.


Carrier insists that its decision to discipline Claimant by dismissal was wholly appropriate. This conclusion on Carrier's part is based, according to its argument, not only on the clear fact that Claimant was guilty but also in terms of the measure of discipline on his poor past record which involved a number of occasions in which he had been disciplined previously including one discharge.

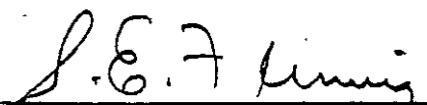
There is ample evidence in the investigation to warrant the conclusion that Claimant was guilty of the violation of sleeping while on duty. Thus, the facts justified Carrier's conclusion that discipline was warranted. In terms of the measure of discipline imposed, the Board does not believe that it should substitute its judgment for that of Carrier in this instance. It is only when such penalties are flagrantly harsh and discriminatory should a Board such as this change the discipline imposed. In this instance, there is no basis for such mitigation and the claim must be denied.

AWARD

Claim denied.


I.M. Lieberman, Neutral-Chairman


G.M. Garmon, Carrier Member


S.E. Fleming, Employee Member

January , 1982
Chicago, IL