

PUBLIC LAW BOARD NO. 2960

AWARD NO. 76
CASE NO. 119

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees -

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The sixty (60) day suspension assessed Trackman Phillip J. Metoyer for allegedly sleeping on duty was without just and sufficient cause and on the basis of an unproven charge. (Organization File 9D-3122; Carrier File D-11-17-415).
- (2) Trackman Phillip J. Metoyer shall have his record cleared of this incident and be compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On June 14, 1982, the Carrier directed the following letter to the Claimant:

"You are directed to appear for formal investigation as indicated below:

Date: Monday, June 21st, 1982
Time: 11:00 a.m.
Place: Proviso Roadmaster's Office - 301 W. Lake Street,
Northlake, Illinois
Charge: To determine your responsibility in connection with your
sleeping while on duty on June 11, 1982 at approximately
12:45 P.M. at the east end of Kaplan Yard.

"You may be accompanied by one or more persons and/or representatives of your own choosing subject to the provisions of applicable scheduled rules and agreements; and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before the Board.

After reviewing the transcript, it is the conclusion of the Board that there is substantial evidence to support the Carrier's finding of guilt. A witness testified that he observed the Claimant in a sitting position with his face down. A couple of times his face went "up and down" and he could see the Claimant was sleeping. At one point, the witness reported that the Claimant's face almost hit his knees. The witness observed the Claimant for about ten minutes. The Claimant's testimony offered in his defense failed to overcome that of the witness.

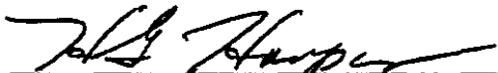
The remaining question is whether a 60-day suspension is appropriate. Based on the seriousness of the offense and the Claimant's past record, it is the conclusion of the Board that the penalty is not arbitrary, capricious, or unreasonable.

AWARD:

The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: 11/15/85