

NATIONAL MEDIATION BOARD
Public Law Board
No. 3063

AWARD NO. 4

PARTIES TO THE DISPUTE:

The Pittsburgh & Lake Erie Railroad and
The Lake Erie & Eastern Railroad Companies.

vs

The Brotherhood of Maintenance of
Way Employees.

Case No. 2.

STATEMENT OF CLAIM:

Claim on behalf of E. H. Altmeyer that he be restored to service as a B&B Carpenter and compensated for all monetary losses sustained as a result of his dismissal from the service of the Company on June 16, 1980, as a result of hearing held at Pittsburgh, Pa., May 28, 1980.

OPINION OF BOARD:

Mr. E. H. Altmeyer, the Claimant, entered the service of the Carrier on April 17, 1973, as a Trackman in the Maintenance of Way Department and on June 14, 1973, transferred to a position of Carpenter in Carrier's Bridge & Building Department. On April 28, 1980, Claimant was assigned as a Carpenter at McKees Rocks, Pa., with assigned hours from 7:30 A.M. to 4:00 P.M., lunch period 12:00 Noon to 12:30 P.M. On this date he was assigned with two other employees, Gray and Bahney, to install canvas curtains around an area used for the spray painting of locomotives in the Diesel Repair Shop Facility at McKees Rocks. The project involved working on scaffolding approximately 40 feet above the ground. About 3:00 P.M. Carrier's Supervisors Sturman and Bednar arrived at the work site to inspect the progress of the curtain installation when they found Claimant Altmeyer asleep on a cushion about about 30 feet from the work site. The other two employees were

missing. It was later developed that Employee Bahney was in the "men's room" and Employee Gray had taken a walk up town. (Bahney was not charged but Gray was charged, found guilty and given 30 days suspension which was sustained by this Board in Award No. 2.)

On May 1, 1980, Claimant Altmeyer was charged with sleeping on duty and ordered to report for investigation on May 19, 1980, to determine his responsibility in the charges. After an agreed upon postponement the investigation was held on May 28, 1980. A copy of the transcript was made a part of the record. A careful reading of the transcript indicates Claimant was given a fair and impartial hearing. He was represented by three Officers of his Organization, including his General Chairman; he was given the opportunity to produce witnesses in his behalf, but chose not to; and, he and his representatives were accorded the right to examine and cross examine Carrier's witnesses, which they did extensively.

On June 16, 1980, the Carrier, after finding Claimant guilty of the charges, formally dismissed him from service for violation of Carrier's General Rules D and D-3 and Safety Rule 3002 (c), which rules read in part as follows:

- "D. Employees must devote themselves exclusively to the Company's service while on duty.
- D-3. Sleeping or assuming an attitude of sleep while on duty is prohibited.
- 3002 (c). Assure self before reporting for duty that you are not experiencing drowsiness, mental confusion, dizziness, etc . . . that are likely to interfere with performing duties safely. If any such symptoms are experienced while on duty, immediately inform immediate supervisor."

The record clearly shows Claimant being asleep while on duty

but was only observed asleep for a period of five minutes when he was awakened by the supervisors. Claimant also testified in the investigation that he was asleep. Thereby violating Carrier's quoted rules.

Claimant and his representatives argue in defense that there were diesel fumes present in the work area 40 feet above the ground which caused Claimant to become drowsy and while he was on the ground waiting for the return of the other two workers fell asleep, or passed out. Claimant contends that he informed his supervisors at the time that there were diesel fumes present but the supervisors argue that no such contention was made.

The Carrier argues and submits several Awards in its support that a crime of sleeping on duty calls for the capital punishment of permanent dismissal. This Board feels there are mitigating circumstances here that must be considered. While Claimant left the work site which was on a scaffolding 40 feet in the air, he did not leave the property but remained within 30 feet of the work site. The other two employees left the work site, one went to the "men's room" and was not charged. The other employee, Gray, not only left the work site but left the property and was absent in excess of 30 minutes. Gray was only suspended without pay for 30 days. While there is some doubt about the diesel fumes argument, the possibility of the fumes contributing to the drowsiness is still present and not entirely discounted. Additionally, a careful reading of the entire record raises the question as to the safety of one man working alone on a 40 foot scaffolding and would the work of installing heavy canvas curtains be done by one man? Was Claimant unconscientiously observing these factors and merely waiting for

his fellow workers to return to the work site when he fell asleep - maybe caused by the fumes?

After weighing all these factors the Board rules that permanent dismissal would be harsh and unjustified. To determine the degree of punishment we must look at Claimant's personal record which was made a part of the record. We find Claimant was involved in three previous infractions of Carrier's rules. He was suspended five days each on two infractions when he was found guilty of being absent without authority, both suspensions were deferred for a period of one year as provided in the rules of the Agreement. The third infraction involved a violation of the Safety Rules for which he received a written reprimand.


The Board, for the reasons cited, awards reinstatement with full seniority and all other rights restored but because of his record rules that he serve the time out of service with out pay as penalty for this violation of Carrier's rules. We also order this decision be made a part of his personal record.

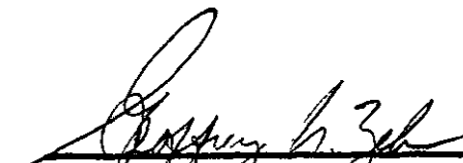
FINDINGS:


That the discipline was excessive.

AWARD:

Claim sustained in accordance with the Opinion.


A. Robert Lowry
Chairman & Neutral


Geoffrey N. Zeh
Labor Member


Richard D. Jones
Carrier Member