

PUBLIC LAW BOARD NO. 3445

Award No. 26
Case No. 26

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Laborer, David Willingham, 1704-33rd St., Sheffield, AL 35660, was dismissed from service for alleged inattention to duty, violating Southern Rule GR-4 and insubordination. Employees request pay for all time lost with vacation and seniority rights unimpaired.

FINDINGS:

Claimant entered Carrier's service on July 18, 1972, and at the time of the incident in question was employed as a laborer at Franklin, Alabama.

By letter dated September 21, 1983, Claimant was notified to attend an investigation concerning charges that he was insubordinate on September 13, 1983. An investigation was held on October 3, 1983. By letter dated October 14, 1983, Claimant was informed of his dismissal from service for his conduct on the aforementioned date.

The issue to be decided in this dispute is whether the Claimant was dismissed for just cause under the Agreement.

The position of the Carrier is that Claimant was guilty of inattention to duty, insubordination, and violation of Operating Rule GR-4 on the date in question, and was properly dismissed from service.

In support of its position, the Carrier cites the testimony of Supervisor J.D. Benson. Benson testified that Claimant was sleeping while on duty, and that when he informed Claimant not to do so, he was verbally abused by Claimant. The Carrier further cites the testimony of Foreman D. Lowery, who testified that he discovered Claimant sleeping in his truck and informed him that he would get in trouble if he continued to do so. The Carrier contends that the testimony given established that Claimant was told on several occasions to refrain from lying down on duty and yet continued to do so. The Carrier further contends that the testimony established that Claimant was verbally abusive to his superiors, and that he failed to follow instructions as ordered. The Carrier maintains that Claimant's actions on the date in question constituted insubordination and inattention to duty. The Carrier further contends that Claimants actions constituted a violation of Rule GR-4, stating "All employees must follow instructions from proper authority, and must perform all duties efficiently and safely".

The Carrier finally asserts that the dispute imposed was not excessive. The Carrier cites several awards holding that insubordination/failure to follow instructions constitutes grounds for dismissal. The Carrier contends that in light of Claimant's poor prior disciplinary record and the seriousness

of the offense, dismissal was the only appropriate disciplinary measure.

The position of the Organization is that Claimant was unjustifiably dismissed from service by Carrier.

The Organization contends that the testimony at the hearing established that the other men on Claimant's shift were standing around and throwing rocks at the time Claimant was allegedly asleep in the truck. The Organization further contends that Claimant was merely sitting in the truck with eyes closed, and was not sleeping. The Organization asserts that Claimant left the truck when asked to, thus following instructions given to him. The Organization alleges that since none of the other men was disciplined for standing around, the Carrier acted arbitrarily by singling Claimant out for punishment.

The Organization further contends that testimony given indicated that Claimant was working at all times he was supposed to be, and that at no time was he actually asleep while on duty.

After a review of the entire record, the Board finds that the termination should be reduced to a lengthy suspension.

It is not the purpose of this Board to rehear an investigation that the Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

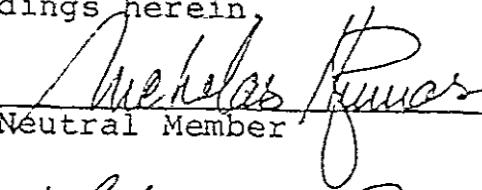
The Carrier has established through substantial, credible evidence that Claimant was guilty of insubordination and failure to properly follow instructions. The testimony given by

Supervisor Benson and Foreman Lowery indicated that Claimant was asleep while on duty and that he was insubordinate and abusive to his superiors. While we note that there is conflicting testimony concerning Claimant's actions, it is a well-established principle that the Carrier may decide issues of credibility and weigh evidence so long as it does not abuse its discretion. In the present case, the Board finds there is sufficient evidence to support Carrier's conclusion that Claimant was guilty of the above-mentioned offenses.

Notwithstanding the above, we find that Claimant should be reinstated to service. We agree with Carrier that Claimant's actions on the date in question were inexcusable and warranted severe discipline. However, in light of the fact that Claimant had recently been hospitalized and that other employees were not working at the time, we find that Claimant should be reinstated to service with seniority unimpaired, but with no pay for time lost.

AWARD:

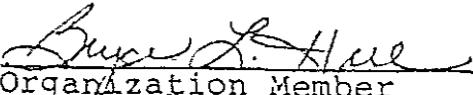
Claim disposed of per Findings herein,



Michael P. Ruas
Neutral Member



L. Miller
Carrier Member



George L. Hale
Organization Member

Date: 11/13/85