

PUBLIC LAW BOARD NO. 3445

Award Number: 50
Case Number: 50

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant H. S. Moore requests restoration to service, seniority and all other rights unimpaired and pay at his respective rate for all time lost, subsequent to July 3, 1987.

FINDINGS

Claimant entered the Carrier's service on February 2, 1976.

By letter dated June 7, 1987, Claimant was directed to attend a formal investigation on charges that he was sleeping on duty. The investigation was held on July 3, 1987. By letter dated July 12, 1987, Claimant was dismissed based on the evidence adduced at the investigation.

The issue to be resolved in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

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On June 4, 1987, at approximately 11:10 a.m., Division Engineer M. E. Reid observed a Carrier vehicle parked apparently unattended with its windows rolled down and doors unlocked. Approaching from behind to the passenger side window, Reid came to observe Claimant stretched across the front seats with his back against the driver side door. Claimant's head was slumped and his eyes were closed. He remained so while for about five minutes while Reid observed him until a passing truck awakened him. Reid confronted Claimant who replied, "Well, I guess you've got me." At the investigation, Claimant testified that he had observed Reid walk up to the truck and that he was not asleep. Claimant had been warned in the past about dozing off while on duty.

Rule GR-26 provides the following: "Sleeping on duty is prohibited. An employe lying down or in a slouched position with eyes closed or with eyes covered or concealed will be considered sleeping."

The position of the Organization is that Claimant was dismissed without just cause because the Carrier has not met its burden of proof. The Organization maintains that because Claimant disputes the one witness against him as to his being asleep, a reasonable doubt exists as to that critical fact. The Organization contends, by implication, that Claimant's sitting in the truck, observing but not speaking to Reid for at least a few minutes, and not "snap[ping] to attention" is consistent with being awake.

The position of the Carrier is that Claimant was dismissed for just cause because he was proved guilty of being asleep on duty. The Carrier

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contends that Claimant's position, his lack of reaction to Reid and his statement to Reid conclusively prove Claimant was asleep. The Carrier argues that Claimant never denied the charge when confronted by Reid and that this fact further proves his guilt. The Carrier maintains that the discipline of dismissal is appropriate because sleeping on duty is a serious offense, historically held to be grounds for dismissal because of its safety implications. Moreover, the Carrier points out that by sleeping on this occasion, Claimant was also disregarding his superiors' prior instructions.

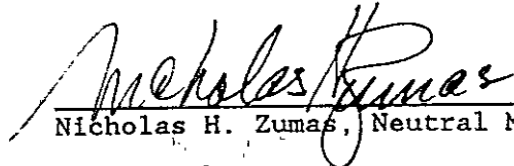
After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.

The Carrier has established by substantive credible evidence in the record that Claimant was asleep on duty in violation of Rule GR-26 and Carrier practice. The evidence as to Claimant's position, behavior (lack of activity) and statements provide an adequate foundation for the Carrier to have reasonably concluded that he was asleep. It is well established that in an industrial atmosphere, the interests of safety are best served when all employees on duty are alert and at their stations. Claimant clearly was not and therefore presented a potential hazard to himself, his co-workers and the public at large.

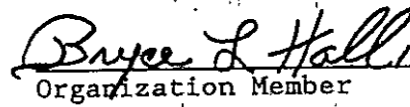
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AWARD

Claim denied.


Nicholas H. Zumas, Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989