

Public Law Board No. 3794

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
CSX Transportation, Inc.

STATEMENT
OF
CLAIM:

The dismissal of Welder Helper W. L. Hargrove, Jr. was without just cause and he shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Claimant, a welder helper with six years seniority, was dismissed for sleeping on duty. A hearing was duly held in the matter before discipline was administered and no prejudicial procedural error is disclosed by the record.

The evidence amply supports Carrier's findings. Welder Albritton, who claimant was assigned to assist, testified that while he was building engine burns at Mile Post 847.1 and was under the impression his assistant was behind him, he heard a train whistle blow, looked up and saw a train coming around the curve. Albritton testified further that he jumped up, began to throw his

equipment out of the way, saw claimant "sitting on the fuel tank of the truck there asleep and hollered at him." Claimant arose, helped the welder finish getting the hose out of the way and the train then passed.

Claimant's testimony is that while he was standing behind Albritton as the latter was building the burns, claimant began to feel sick and proceeded to sit on the gas tank of the truck. His testimony shows that he sat there for a considerable amount of time:

"...and my head was still bothering me and at that time I just felt my self just doze on off and the next thing I know, the welder hollered at me."

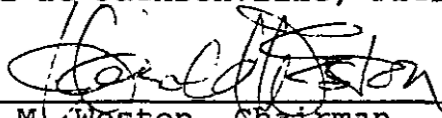
Claimant had previously been warned orally and by letter against sleeping while on duty and there is no justification for his flagrant lack of due care in the instant case. While Albritton was engaged in his welding duties, claimant's responsibility was to be vigilant and to provide protection against traffic and other hazards. He did not warn the welder that he was too sick to discharge his responsibilities or that he was going off to relax on the truck tank. No persuasive medical proof has been furnished that claimant's condition was such that his negligence could be excused. On the contrary, his own testimony establishes that

he could not be relied on to be alert and provide the protection to which the welder was entitled.

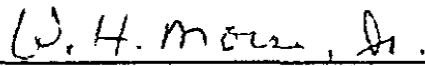
The offense is particularly serious in view of the time and place it occurred. No valid ground exists for disturbing Carrier's decision to dismiss claimant.

AWARD: Claim denied.


Adopted at Jacksonville, Florida, March 17, 1987.



Harold M. Weston, Chairman



Carrier Member



Employee Member