

PUBLIC LAW BOARD NO. 4021

Award No. 40  
Case No. 40

PARTIES  
TO  
DISPUTE

The Brotherhood of Maintenance of Way Employees

and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT  
OF CLAIM

1. Carrier's decision to remove former Middle Division B&B Helper R. D. Bales from service effective September 11, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Bales, with seniority rights unimpaired, and compensate him for all wages lost from September 11, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant was employed as a B&B Helper, and had approximately five years' of service with the Carrier at the time of his discharge. Claimant was discharged for accumulating more than sixty demerits on his record under the Brown System of discipline in effect on this property. The instance which triggered the discharge is one in which the Claimant was charged with sleeping on duty, and he admitted at the investigation that he was guilty. He was assessed twenty demerits for the offense, and that assessment carried his balance to sixty.

The Organization raises two arguments in support of its claim: that the assessment of twenty demerits was excessive for the offense; and that Claimant's record should have stood at thirty, rather than forty demerits at the time of the offense, and that this latest assessment should only bring his balance to fifty - an amount not warranting discharge.

With regard to the question of the prior balance, the record indicates that Claimant did, in fact, have a period in excess of 120 calendar days without discipline, between October 22, 1985,

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and February 22, 1985, and that he was not credited with ten demerits for such time. However, the Organization's argument fails for two reasons. First, as the Carrier points out, Rule 31-G-(b) specifically excludes from the period, days off due to personal illness, and Claimant had seven such days during the period in question. Thus, he did not have the requisite time with a clear record to warrant a credit.

Moreover, even if the Claimant had been entitled to a credit, he waived his right to challenge the record when, on March 13, 1985, he acknowledged that his personal record stood at fifty demerits. That acknowledgement, which appears in his record, constitutes evidence of his knowledge of the balance, and the time limit for him to grieve the matter expired long before the discharge. Thus, the argument has no merit.

With regard to the Organization's second argument - that twenty demerits was excessive - the Board finds that the discipline was appropriate. The Organization's contention is based upon the fact that none of Claimant's co-workers roused him at the end of his lunch period, and, therefore, they shared in his responsibil-

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ity. The Board is aware of no principle or rule of law which exonerates Claimant under such circumstances. It is his responsibility - and his alone, to be awake while on duty. Indeed, one would hope that his co-workers would awaken him at the end of the lunch period; however, they are under no obligation to do so, and their failure to do so does not serve to mitigate his offense. In view of the fact that Claimant had been assessed more than 100 demerits in his career - most for failing to attend to his duties, the discipline of twenty demerits was appropriate.

The Board finds that the Claimant was properly assessed twenty demerits for the offense, and that his discharge was warranted under the Brown System of discipline.

AWARD

Claim denied.

C. F. Foose  
C. F. Foose, Employee Member

L. L. Pope  
L. L. Pope, Carrier Member

J. R. Johnson  
J. R. Johnson, Chairman  
and Neutral Member

Dated: January 20, 1987

