

Award No. 22

Case No. 22

PUBLIC LAW BOARD NO. 4244

PARTIES)
TO)
DISPUTE)

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
AND
ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Carrier's decision to remove former Plains Division Machine Operator J.R. Sadler from service, effective October 8, 1987 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Sadler to service with his seniority rights unimpaired and compensate him for all wages lost from October 8, 1987.

FINDINGS: This Public Law Board No. 4244 (the "Board") upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved.

In this dispute former Plains Division Machine Operator J.R. Sadler (the "Claimant") was notified to attend a formal investigation on October 8, 1987, in Amarillo, Texas concerning his alleged sleeping while on duty on September 29, 1987, at Lubbock, Texas, at approximately 11:30 a.m., and reporting late for duty the same date, in possible violation of Rules A, B, 602, 604 and 607 of the Carrier's Rules Maintenance of Way and Structures. Pursuant to the investigation the Claimant was found guilty of the rules violation and he was removed from service.

At the investigation it was developed that on September 29, 1987 the Claimant's assigned hours were 7:00 a.m. to 3:30 p.m. His specific job assignment on that date was to mow weeds. The record further shows that the Claimant reported late for duty that day and he was later found sleeping while on duty between the hours of 11:30 a.m. and 12:45 p.m. The Claimant admitted to these facts at the investigation. He further testified that 30 minutes of the sleeping time in question constituted his lunch period.

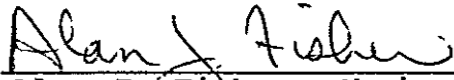
The Board has carefully read and considered all the evidence of record. It is clear from the record that the Claimant was guilty of reporting late for work and sleeping while on duty.

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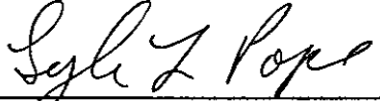
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Sleeping while on duty is a dismissable offense. Numerous awards have upheld a carrier's right to dismiss an employee who is derelict in the performance of his duties. However, under the circumstances of this case and the Claimant's length of service, the Board finds that the Claimant should be given a "last chance" opportunity to prove that he can be a responsible employee. Accordingly, the Claimant will be reinstated to service with his seniority rights unimpaired but without pay for time lost. Furthermore, the Claimant's personal record will stand with 30 demerits as it did at the time of his removal from service.

AWARD: Claim sustained per above findings.


Alan J. Fisher, Chairman
and Neutral Member

Clarence F. Foose
Organization Member


Kyle L. Pope
Carrier Member

Dated: September 21, 1988, Chicago, Illinois