

PUBLIC LAW BOARD NO. 5850

Award No. 381
Case No. 381

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when Claimant Chris L. Phillips (1122373) was issued a non-serious 30-day record suspension with one year probation by letter dated December 28, 2009 for violation of MOWOR 1.11, sleeping while on duty on November 12, 2009.
2. As a consequence of the violation referred to in part 1 the Carrier shall immediately correct the Claimant's discipline records and make the Claimant whole for all time lost.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant is part of a crew starting work at 2000 hours. The crew is to work with the Rail Detector and change out any rail found to be defective.

Claimant and crew were instructed to wait for the Rail Detector at a location that is used as a staging area or a meeting place.

The crew at 0130 hours was at the proper location. The Roadmaster drove up, turned on his special bright lights and found Claimant in the passenger side with the seat

laid back and his feet on the dashboard.

The Roadmaster testified he saw the relaxed position of Claimant and that his eyes were closed.

An Investigation was convened:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged sleeping while on duty at 0130 on Thursday, November 12, 20009."

According to the investigation, since the crew could not begin work until the Rail Detector arrived, the Claimant's immediate Supervisor told Claimant to relax. So Claimant (the driver) swapped seats with another crew member that put Claimant in the passenger side and he set the seat at a low setting, placing his feet on the console.

On Page 24 of the transcript, the following Question was asked of Claimant with his response:

"Wayne: And at any time did the foreman or yourself tell Mr. Mangrove that you were taking a nap?

Chris: No."

The aforequoted could be taken two ways: i.e., no we didn't tell him we were taking a nap, or the aforequoted could be accepted as an admission of guilt. There was some discussion about napping as contained in Rule 32, but it was never established that claimant was on his lunch period.

The Board is left to determine credibility which it won't do.

The Carrier accepted the Supervisor's position that Claimant was in a relaxed position with his eyes closed.

Credibility of witnesses is the Carrier's reasonability. This Board will not

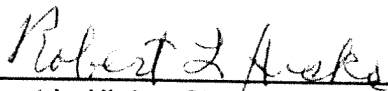
determine credibility.

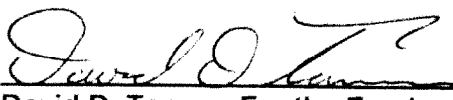
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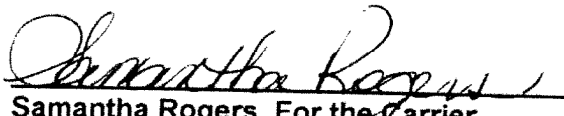
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


David D. Tanner, For the Employees


Samantha Rogers, For the Carrier

Dated: 3/5/11