

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 5905**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**ELGIN, JOLIET AND EASTERN RAILWAY COMPANY**

)

) Case Nos. 19 & 20

)

) Award No. 20

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. M. Gevaudan, Carrier Member

Hearing Date: August 31, 2001

**STATEMENT OF CLAIM:**

1. The dismissal of Trackman H. Nunnery resulting from investigations held May 23, 2001, was without just and sufficient cause.
2. As a consequence of the violation referred to in Part (1) above, Claimant's record shall be cleared and he shall be allowed to return to work immediately, with compensation for all lost wages.

**FINDINGS:**

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On May 17, 2001, Carrier notified Claimant to report for two separate investigations on May 23, 2001. The investigations concerned Claimant's allegedly being in his truck, assuming the attitude of sleep on May 16, 2001. One investigation concerned allegations that Claimant allegedly assumed the attitude of sleep and that he falsified the Foreman's Daily Report for May 16 by reporting that he was working when he was sleeping. A second investigation concerned the allegation that Claimant violated Roadway Worker Protection Rule 17.10.2 by failing to provide proper flag protection for Atlas Excavating workers who were working at MP 32. The hearings were held as scheduled. On May 25, 2001, Carrier advised Claimant that he had been found guilty of the charges. Carrier assessed Claimant forty demerits for sleeping and falsifying

his daily report and sixty demerits for failing to provide proper flag protection. These assessments, when combined with demerits already on Claimant's discipline record, brought his total to 160 demerits. Pursuant to Carrier's policy that an employee who accumulates 100 demerits is dismissed from service, Carrier dismissed Claimant.

There is no question that Carrier proved all of the charges by substantial evidence. Indeed, Claimant admitted each of the violations during the investigations. The only issue is whether the penalties assessed were arbitrary, capricious or excessive. The Organization contends that Claimant should be reinstated and given one last chance to demonstrate that he can be a reliable productive employee.

The Board cannot agree with the Organization's position. Claimant's sleeping on duty and failure to provide proper flag protection are particularly serious. The latter could have resulted in a serious accident causing injury or death to the unprotected workers. Claimant's only explanations were that the weather was hot, he got bored, and the workers were looking out for themselves. This is simply unacceptable. Under these circumstances, we see no basis to disturb the discipline imposed.

#### AWARD

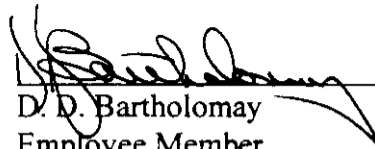
Claim denied.



Martin H. Malin, Chairman



A. L. Reichle  
Carrier Member



D. D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, January 16, 2001.