

**PUBLIC LAW BOARD NO. 7104**

**BROTHERHOOD OF** )  
**MAINTENANCE OF WAY EMPLOYES** )  
**DIVISION – IBT RAIL CONFERENCE** )  
 )  
**vs.** )  
 )  
**CSX TRANSPORTATION, INC.** )

**CASE NO. 34**  
**AWARD NO. 34**

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

1. The thirty (30) day suspension imposed upon Trackman Anthony C. Wilson for violation of CXST Operating Rules A and D and General Regulations GR-2 and GR-3 in connection failure to properly and safety perform his duties on August 21, 2007 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (System File D70713207/12(07-1223)).
2. As a consequence of Part 1 above, we request that Mr. Wilson be exonerated and that the charge letter and all matters relative thereto be removed from Mr. Wilson’s personal file and he be made whole for all losses suffered as a result of the Carrier’s actions.”

**FINDINGS:**

Public Law Board No. 7104, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, A.C. Wilson, has been employed by the Carrier since 2002. On August 29, 2007, Claimant was charged to attend an investigation to determine the facts and place his responsibility, if any, in connection with alleged sleeping on duty and failure to properly inspect roadway machines on August 21, 2007, near Hamlet, North Carolina. Following the investigation, Claimant was found guilty of the charges and assessed a 30-day actual suspension.

On August 21, 2007, Claimant, who was employed as a trackman, had been upgraded to operate an anchor applicator due to a shortage of machine operators.

Claimant was taking prescription medication which had the possible side effect of causing lightheadedness. Before the team began work that day, he experienced that condition. Claimant went to a spike driver, where he leaned back and closed his eyes.

Carrier Engineering Manager Tackett testified at the investigation that he approached the anchor applicator and observed that the operator was not present. He stated that his inspection revealed several deficiencies which were not reflected on Claimant's machine inspection report.

Mr. Tackett further testified that he found Claimant asleep on the spike driver, with his feet propped up on the spike feeding trays. He stated that he woke Claimant and told him it was contrary to Carrier policy to sleep on the job. As he testified at the investigation, Claimant denied being asleep and told Mr. Tackett he had taken medication which could cause lightheadedness. Claimant offered various justifications for the discrepancies observed by Mr. Tackett.


We have carefully reviewed the record in its entirety. First, we find no procedural irregularity which denied Claimant his right to a fair and impartial investigation. On the merits, we find that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. The testimony of Mr. Tackett that he observed Claimant sleeping is sufficient to meet the Carrier's burden of proof on that issue, and, while Claimant denied that he was asleep, he acknowledged he was reclining, with his eyes closed, while on duty. Mr. Tackett's testimony concerning the deficiencies on the anchor applicator is also sufficient to satisfy the Carrier's burden of proving Claimant's failure to properly perform his inspection duties.

Given that Claimant's guilt of these charges has been established, we cannot conclude that the Carrier's determination a 30-day suspension was warranted represents an unfair, arbitrary or discriminatory exercise of the Carrier's discretion to determine penalties.


**AWARD**

**Claim denied.**

  
**JACALYN J. ZIMMERMAN**  
Neutral Member

  
**MATTHEW BONZELLERI**  
Carrier Member

Dated this 16<sup>th</sup> day of Nov, 2009.

  
**TIMOTHY KREKE**  
Organization Member  
11/16/2009