

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 168

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of C. A. Borders for reinstatement with all rights and privileges and pay for all time lost as a result of his dismissal from service following formal investigation on December 20, 2007, concerning sleeping on duty during the TS-30 morning safety meeting at approximately 7:30 a.m. on Tuesday, November 27, 2007, in Detroit Yard.

(Carrier File MW-PITT-07-84-SG-440)

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:


The record reflects that on November 27, 2007, Claimant's gang met on the bus for their morning job and safety briefing. The Supervisor conducted the safety meeting. Then the Process Engineer addressed the gang. The Process Engineer testified that he observed Claimant sitting in a slouched position with his head down and his eyes closed. The Process Engineer testified that he spoke directly and loudly to Claimant but Claimant did not move. He spoke directly and more loudly to Claimant a second time but Claimant did not move. He spoke a third time and Claimant jumped up, apparently startled, and was taken out of service. The Supervisor testified and corroborated the Process Engineer's testimony.

Claimant testified that he had a headache that morning and therefore was resting his head on his arms but was not sleeping. Claimant maintained that he was paying attention to the Supervisor and the Process Engineer but did not respond to the Process Engineer because he did not realize that the Process Engineer was talking to him. As an appellate body that does not observe the witnesses testify, we are in a comparatively poor position to assess witness credibility. Consequently, we defer to the reasonable credibility determinations made on the property. We find the decision on the property to credit the testimony of the Process Engineer and the Supervisor was reasonable and defer to it. We conclude that Carrier proved the charge by substantial evidence.

The charge was very serious. Claimant was a relatively short-term employee (only three years of service). We find no mitigating circumstances in the record. Accordingly, we conclude that the penalty imposed was not arbitrary, capricious or excessive. The claim must be denied.



M. H. Malin
Chairman and Neutral Member


T. W. Kreke 12-17-08
Organization Member
D. L. Kerby 12-17-08
Carrier Member

Issued at Chicago, Illinois on December 5, 2008