

SPECIAL BOARD OF ADJUSTMENT 1049

Award No. 126  
Case No. 126

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
  
and  
  
Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. dismissal of B&B Foreman G. G. Grant for allegedly sleeping on duty on June 20, 2001, was without just and sufficient cause and excessive (System File MW-GNVL-01-10-BB-215).
2. B&B Foreman G. G. Grant shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

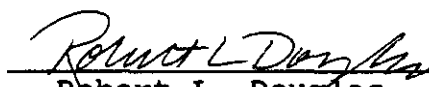
The Claimant had a seniority date of February 19, 1991, and was serving as a Flagging Foreman on June 20, 2001. The record includes contemporaneous documentary evidence and testimony from the Bridge and Building Supervisor who observed the Claimant sleeping on the job on June 20, 2001 from 1:15 p.m. until 1:39 p.m. in the Claimant's vehicle approximately 150 yards from the track at Mile Post 385.1 in the Charlotte, North Carolina area. (Carrier Exhibit a at page 18 of 20 and transcript of investigation hearing at 6-12.) Although the Claimant admitted

that he had been sleeping on the job, he attributed his action to the fatigue he had experienced as a result of the four hours he spent each day commuting to work and then returning to his home. (Transcript of investigation hearing at 12-15.) The record, however, contains un rebutted credible evidence that the Claimant had worked on June 20 and June 19, 2001 and had not worked between June 8 and June 19, 2001. As a result, the Claimant's explanation that he had suffered from excessive fatigue due to the ongoing length of his commute to protect his position lacks credibility. Under these special circumstances in the context of the flagging protection assignment held by the Claimant, no basis exists to change the Carrier's decision to terminate the Claimant for sleeping on duty.

AWARD:

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

The Claim is denied.

  
Robert L. Douglas  
Chairman and Neutral Member

  
D. D. Bartholomay  
Organization Member

  
D.L. Kerby  
Carrier Member

Dated: 6/10/02