

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 182

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. Walker requesting that he be made whole and returned to service with pay for all time lost with seniority, vacation unimpaired as a result of his dismissal following a formal investigation held on September 17, 2007, for his responsibility in connection with violation of Norfolk Southern Safety and General Conduct Rule GR-26 concerning sleeping on duty while assigned as a machine operator on Walking Spiker NS8607W on August 28, 2007.

(Carrier File MW-CN-07-19-SG-336)

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.

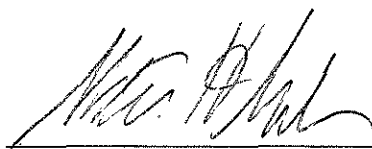
AWARD

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 August 28, 2007, at approximately 11:30 a.m. the Supervisor walked toward the rear of Claimant's gang and observed him sitting on his Walking Spiker in a slouched position with his eyes covered, apparently asleep. The Supervisor observed Claimant for a few minutes and Claimant did not move. The Supervisor took a picture with his cell phone and then called the Foreman to come to the rear of the gang. The Foreman came to the rear of the gang and observed Claimant in the same condition for two to three minutes. At that point, according to testimony from the Supervisor and the Foreman, they touched Claimant, waking him up, told Claimant that they had caught him sleeping and the Supervisor removed Claimant from service.

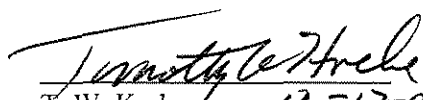
In his testimony, Claimant denied that he was sleeping and maintained that he was merely taking a break because of the hot weather. As an appellate tribunal that does not observe the witnesses testify, we generally defer to the reasonable resolution of credibility conflicts made on the property. In the instant case, the testimony of the Supervisor was corroborated by the testimony of the Foreman and the picture taken with the Supervisor's cell phone. Given the length of time that Claimant was observed in a slouched position with his eyes covered and not moving, we conclude that the decision made on the property not to credit Claimant's denial was reasonable and Carrier proved the charge by substantial evidence.

Given Claimant's relatively short tenure (less than three years) with Carrier and the total absence of any mitigating factors, we cannot say that the discipline imposed was arbitrary, capricious or excessive. Accordingly, the claim is 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 November 30, 2008