

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 235

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissed from all services with Norfolk Southern Railway) of Mr. J. Frederick issued by letter dated July 12, 2012 in connection with his alleged violation of Norfolk Southern Safety and General Conduct Rule GR-26 concerning sleeping on duty while assigned as a fuel truck driver on Gang TS-30 on June 12, 2012 was arbitrary, capricious, unjust, unwarranted, unreasonable and in violation of the Agreement (Carrier's File MW-DEAR-12-31-SG-222).
2. As a consequence of the violation referred to in Part 1 above, Mr. J. Frederick shall receive the remedy prescribed under Rule 40(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds 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.

This award is based on the facts and circumstances of this particular case and shall not serve as precedent in any other case.

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 Claimant entered service on October 15, 2007 as a Trackman and was employed as a Fuel Truck Driver on the dates of the events which led to this case. On June 12, 2012 the Claimant was working in this capacity as part of the Timber and Surfacing Gang 30 near Elkhart, Indiana. That afternoon the Claimant was told to drive the gang fuel truck to the gang camp to get a supply of hydraulic oil, a product which was needed for the machines the gang was using that day. Shortly thereafter, Gang Supervisor Broce noticed the Claimant's truck was sitting idle on the tracks. Supervisor Broce

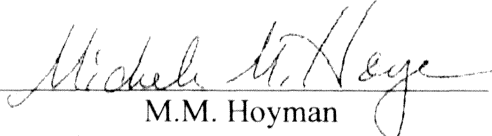
attempted to get the Claimant's attention by waving his arms in his direction, but received no response. He then walked up to the Claimant's truck and observed that his eyes were concealed and he was in a slouched position. After Supervisor Broce again failed to get the Claimant's attention by waving his arms, he approached the truck a second time and the Claimant appeared to become aware of his surroundings. When questioned about what he had been doing, the Claimant replied "sleeping." Due to these events the Claimant was held out of service pending an investigation. The Carrier charged the Claimant with a violation of GR-26, which prohibits sleeping on duty, and conducted a formal investigation including a hearing on June 28, 2012. The Carrier found the Claimant guilty of the charge and dismissed him via a letter on July 12, 2012.

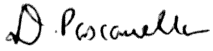
The Carrier's position is that the Claimant was clearly sleeping while on duty and thus in violation of GR-26. The Carrier notes in particular the testimony of Supervisor Broce, which was later corroborated by Terminal Supervisor Dean, who witnessed the Claimant appearing to awake from his slumber. Supervisor Broce approached the truck in a visible manner multiple times, which did not draw the attention of the Claimant. Most notably, the Claimant explained his actions as sleeping at the time and again verified the story during the hearing (See Carrier Brief, page 6). The Carrier notes that GR-26 is designed to protect both the safety of the Claimant and of other employees, and falling asleep on duty at any time can have severe safety consequences.

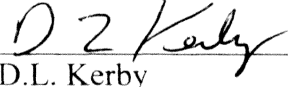
The Organization does not dispute the fact that the Claimant was sleeping, but argues that given the circumstances of the case dismissal is not appropriate. The Organization argues there were several mitigating circumstances here that should be taken into account. First, the Organization characterizes the Claimant's five year service record as "significant seniority." Second, the Organization states the Claimant has a clean work record which should be taken into account. Third, the Organization states that the Claimant was not "nesting" (exhibiting a strong intent to sleep) and merely dozed off (See Organization Brief, pages 8-10). Finally, the Claimant's actions did not endanger anyone's safety and did not deny the Carrier any due labor, as he appeared to only be sleeping for a short period of time (see Organization Brief, page 13).

There is no dispute that the Claimant was sleeping in this case, and thus is in obvious violation of GR-26. Sleeping while on duty in any circumstance is a serious violation of Carrier policy, but in this case we find that the level of misconduct is mitigated by several factors. First, the Claimant admitted at the scene and at the hearing that he fell asleep and did not try to justify the action. Second, while falling asleep in any circumstance is a safety hazard, the circumstances in this case suggest that at no time was the safety of the Claimant or his coworkers in jeopardy. For these reasons, we find that dismissal is not appropriate. The Claimant shall be reinstated, but without back pay.

The claim is partially sustained.


M.M. Hoyman
Chairperson and Neutral Member


D. Pascarella
Employee Member


D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on June 20, 2013.