

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION"

Award No. 11

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-86-18-F12) that:

The dismissal of Track General Helper S. Enos was without just and sufficient cause and was arbitrary and capricious.

REMEDY:

The Claimant shall be reinstated without loss of compensation, seniority and other contractual benefits and privileges the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, E. Sterling, was discharged by the Carrier on July 28, 1986 for sleeping on duty. The Organization seeks the Claimant's reinstatement without loss of benefits.

The arbitration hearing in this matter took place on August 26, 1987. Claimant was present and represented by the Organization.

At the conclusion of the hearing, the Board made an immediate decision that the Claimant should be reinstated. The Board reserved determination, however, as to whether he was entitled to back pay.

The basic facts are not complex. Claimant was a General Track Helper. On July 25, he was found by his superiors to be sleeping in a rail car while on duty.

The Carrier maintains that Claimant's sleeping on duty violated Work Rule 39 and is a dischargeable offense. The Organization argues that the claim should be sustained, as there existed substantial mitigating factors, including that the Claimant was resting in the rail car because he was ill and had become overheated.

Employer Work Rule 39, cited by the Carrier, states:

39. Sleeping on Duty


Sleeping while on duty is a dischargeable offense.

The Board, as previously noted, determined on the date of the arbitration hearing that the Claimant should be reinstated. It made this determination in light of the mitigating factors forcefully and successfully argued by the Organization. In addition, at the arbitration hearing the Claimant expressed a positive concern for his job and responsibilities.


The Board now determines, however, that the Claimant's reinstatement should be without back pay. Despite the mitigating factors, the Grievant admittedly was sleeping while on duty. This is a serious offense, which precludes the granting of back pay under the circumstances here present.

AWARD

Claim sustained in part. The Claimant is reinstated but without back pay.


R. B. BIRNBRAUER
Carrier Member


W. E. LaRUE
Organization Member


S. E. BUCHHEIT
Neutral Member