

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CSX TRANSPORTATION, INC.

Case No. 48

STATEMENT OF CLAIM:

Claim that the five (5) day actual suspension issued to Mr. W. E. McCullough - ID# 171071, as a result of an investigation which was held on September 15, 1994 [sic], in Jacksonville, Florida, was without just and sufficient cause, and based on unproven charges. Request that his record be cleared of charges levelled, and that he be made whole for all lost wages and benefits account being suspended from service.

FINDINGS:

On July 30, 1993, the Claimant was notified that he was being charged with violation of Carrier Rule D in that on July 23, 1993, he was allegedly found in a "stooped over position in a chair, apparently asleep" while working as Bridge Tender on the Sanford Subdivision in Jacksonville, Florida. Additionally, he was instructed to attend a formal investigation of the allegations. After several postponements, the hearing was held on September 15, 1993.

On October 4, 1993, the Claimant was informed by the Carrier that he had been found guilty as charged. As a result, he was assessed a five-day suspension.

The Claimant filed his appeal, challenging the Carrier's decision.

The parties being unable to resolve the issue, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of sleeping on the job in violation of the Carrier rules. The record reveals that the Supervisor of Bridge and Buildings received a call from one Steven Gorman on the morning of July 22, 1995, indicating

that he had been attempting to have the draw bridge raised for several hours. When the supervisor arrived at the drawbridge to investigate, he found the Claimant with his head down, "apparently asleep". The Claimant eventually got up and denied that he had been sleeping. The Claimant also stated that he did not see Mr. Gorman. The supervisor testified that Mr. Gorman was very upset and that Mr. Gorman actually thought that the Claimant had also been drinking.

The supervisor testified that when the Claimant got up, he did not look alert but instead "looked like a man that had woke up real fast".

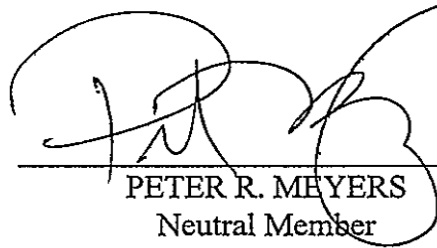
The Organization tried to develop evidence of problems between the supervisor and the Claimant in order to show that the supervisor had exaggerated the facts in his testimony. However, the Claimant himself denied that there had been a bad relationship between the Claimant and his supervisor.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case had been a long time employee of the Carrier. Consequently, the five-day suspension for the very serious offense of sleeping on the job was properly lenient and cannot be considered excessive. The Claimant was obviously given credit for his lengthy service when the discipline was assessed. Very often offenses of this kind can lead to lengthy suspensions and termination. For all of the above reasons, the claim will be denied.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member

Organization Member

Dated: _____

Dated: _____