

AWARD NO. 332
Case No. 332

File No. Mitchell-JK-04-22-INV/MW-GNVL-22-04-LM-176 SOU

SPECIAL BOARD OF ADJUSTMENT NO. 1049

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) DIVISION – IBT RAIL CONFERENCE
TO)
)
DISPUTE) NORFOLK SOUTHERN RAILWAY COMPANY
) (FORMER SOUTHERN RAILWAY COMPANY)

STATEMENT OF CLAIM:

Claim on behalf of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. J. Mitchell, issued by letter dated May 6, 2022, in connection with his alleged improper performance of duty in that supervision observed him sleeping on duty on March 31, 2022 at approximately 9:20 A.M. at Mile Post 593 in Flowery Branch, Georgia was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh and excessive (System File Mitchell-JK-04-22-INV/MW-GNVL-22-04-LM-176 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant J. Mitchell shall now have his dismissal set aside with all notations thereof removed from all Carrier records and he shall also be restored to the Carrier's service with all seniority and restored to all financial and benefit losses, such as vacation and health insurance benefits occasioned as a result of the violation, including: (1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully dismissed); (2) any general lump-sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service; (3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any junior employee for work Claimant could have bid on and performed had Claimant not been removed from service; and (4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 31, 2022, Claimant J. K. Mitchell was employed by the Carrier as a track laborer. When the truck in which Claimant and his coworkers were riding arrived at the job site, the coworkers exited the truck and met with a supervisor to conduct a job briefing. When the supervisor noticed that Claimant was not with the coworkers, he went to the truck, where he observed Claimant sleeping. When Claimant awoke due to a door of the truck slamming, he acknowledged that he had been sleeping. He later sent a text to the supervisor apologizing for falling asleep on the way to the job.

By notice dated April 5, 2022, Claimant was directed to attend a formal investigation to determine his responsibility, if any, in connection with “improper performance of duty in that Supervision observed you sleeping while on duty” during the incident described above. The hearing was held on March 20, 2022, at which the supervisor testified to having observed Claimant sleeping, and Claimant admitted that he had dozed off. After the hearing, Claimant was found to be guilty as charged, and by notice dated May 6, 2022, he was dismissed from service.

The Organization contends that the discipline assessment was arbitrary, excessive, and unwarranted. It cites three prior awards from the Board which involved employees who were sleeping while on duty, and it states that those employees were returned to service when the neutral found that safety was not compromised, and the employees were only asleep for a brief period.

The Organization asserts that Claimant was honest and forthright about the events that transpired, noting his testimony that he did not intend to fall asleep and that he merely dozed off in the back seat of the gang truck on the way to the jobsite. It also points to his testimony that he did not initially hear the supervisor because he had dozed off with his ear buds inserted. The Organization

argues that the safety of Claimant and the rest of the gang was not compromised at any time during the short period Claimant had dozed off.

The Organization emphasizes that Claimant wrote in his apology that he loves his job with the Carrier and that he wished to remain in the Carrier's service as a lifelong career. It states that Claimant had no history of discipline, and it avers that, while Claimant only had a brief service record, there is nothing in the record that would indicate that Claimant could not have learned from his admitted mistake. The Organization concludes that, in light of Claimant's honesty and clean service record, and the arbitral precedent noted above, dismissal was not warranted, and that Claimant should be returned to service.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment. It asserts that the evidence adduced at the hearing, including Claimant's own admissions, fulfilled its burden of producing substantial evidence to establish Claimant's guilt

With respect to the level of discipline imposed, the Carrier states that the record indicates that this event was not the first time Claimant's supervisor had observed Claimant apparently sleeping, but that the supervisor had shown Claimant leniency and had counseled Claimant about the importance of rule compliance. The Carrier states that it has the right to expect its employees to remain alert and attentive while they are performing their work assignments, and it asserts that Claimant's behavior was a breach of the employment relationship it is not required to tolerate. It cites prior awards which have upheld dismissal for employees who committed similar misconduct, especially for employees who had short tenure, as Claimant did. The Carrier states that there are no mitigating circumstances which warrant modification of the discipline, and it asserts that dismissal is appropriate in light of the seriousness of the offense.


We have carefully reviewed the record in this case and the parties' arguments, and we find that the Carrier has provided sufficient evidence to establish that Claimant was guilty as charged. Claimant candidly admitted, both in his written apology to his supervisor, and in his testimony, that he had been sleeping, and it has been held in countless prior awards that a charged employee's

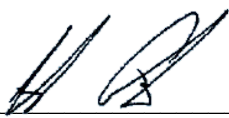
admission of guilt is sufficient to meet the Carrier's burden of proof. We find no reason to conclude otherwise here.

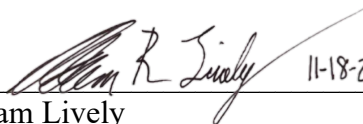
Having found that the charges were proven, we turn to the level of discipline. There is no question that sleeping while on duty has historically been considered a serious offense, especially when Carrier operations or safety is compromised, and as noted above, both parties have supplied arbitral support for their respective positions regarding dismissal for sleeping offenses. In this case, we take into consideration multiple factors, including the extent which safety and operations were compromised, Claimant's short tenure, his lack of prior formal discipline, and his acceptance of responsibility and contrition.

After careful consideration of those elements, we find that Claimant should be afforded another opportunity to continue what was admittedly a fairly brief career. We hold, however, that if Claimant wishes to continue that career, it would not be appropriate in restoring him to service for him to have accumulated additional seniority during his time out of service, which otherwise would result in him having almost five times as much seniority as the time which he actually worked. Should Claimant desire to return to service, his seniority date should be adjusted to afford him a seniority date which would reflect the time between his original establishment of seniority and the date he was dismissed. We therefore conclude that Claimant is to be returned to service, without back pay, consistent with the terms set forth above. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.

AWARD: Claim sustained in accordance with the findings.


Michael D. Phillips
Chairman and Neutral Member


Adam Gilmour
Employee Member

 11-18-2024
Adam Lively
Carrier Member