

AWARD NO. 588
Case No. 588

Organization File No.
Carrier File No. JE-BNG-03-50

SPECIAL BOARD OF ADJUSTMENT NO. 1063

PARTIES) BROTHERHOOD OF LOCOMOTIVE ENGINEERS
)
TO)
)
DISPUTE) NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Harrisburg Division Engineer J. G. Kollra for removal of 15-day actual suspension (as well as 15-day deferred suspension) and payment for all time lost in connection with sleeping on duty while assigned as crewmember on Train 41T9325 on November 25, 2002.

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, has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

At approximately 4:30 am on November 25, 2002, three Carrier officials approached Claimant's train, which had been stopped for approximately one hour because of problems with a train ahead. They boarded the locomotive, looked inside, and concluded that Claimant and his conductor were sleeping. Trainmaster Smyth shined a flashlight in the cab from the back, and observed no movement. He shined the light in the engineer's side view mirror, and said he could

"plainly see [Claimant's] eyes were closed." After some five to seven minutes, they entered the cab and accused the employees of sleeping.

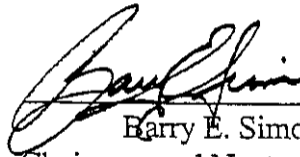
Claimant and his conductor were subsequently directed to attend a formal investigation at which they were charged with sleeping on duty. Following the investigation, Claimant was assessed a fifteen day actual suspension and a fifteen day deferred suspension.


Claimant denied he was sleeping on duty, as did the conductor. Of the three officers who were on the scene, only Smyth testified that he observed Claimant with his eyes closed. Terminal Trainmaster Browne testified he did not observe either of the employees from outside the cab. When he entered the cab, the employees were awake. Assistant Superintendent Dickson testified he never saw Claimant's eyes, although he was standing with Smyth. He concluded, however, that Claimant was sleeping because he had his arm on the armrest and his head in his hand. Also supporting Dickson's conclusion was the fact that Claimant did not seem to react to the flashlight being shined into the cab.

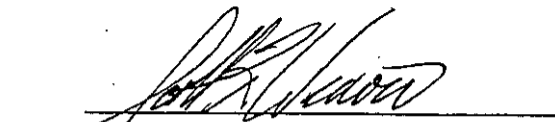
The Carrier has a burden of proving its case by substantial evidence. In this case, only one of three officers claims to have seen Claimant's eyes closed. Browne obviously was not in a position to observe either of the employees. The fact that Dickson testified he could not see Claimant's eyes closed is significant. If he was standing with Smyth, and Smyth saw Claimant's eyes closed, it certainly would have been reasonable for Smyth to have Dickson confirm his observation. His failure to do so leaves a gap in the evidence. We conclude, therefore, that the Carrier's charge has not been proven.

It may certainly have been true that there was no movement in the locomotive, and that Claimant failed to notice the light being flashed in the cab. This might indicate that Claimant was inattentive, but that was not the charge against him. The Carrier charged him with sleeping, and that is what it must prove. We will, therefore, sustain the claim.

AWARD: Claim sustained. Carrier is directed to comply with this Award within forty-five days.


Harry E. Simon
Chairman and Neutral Member


Paul T. Sorrow
Employee Member


Scott R. Weaver
Carrier Member

Dated: February 24, 2004
Arlington Heights, Illinois