

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 37

Docket No. NEC-BMWE-SD-1390D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated September 3, 1985, Claimant W. Richards was notified to attend a hearing in connection with the following charge:

Violation of NRPC Rules of Conduct, General Rule 'L,' which reads in part: "Employees shall not sleep while on duty;" and Rule 'K,' which reads in part: "Employees must attend to their duties during the hours prescribed and comply with instruction from their supervisor."

Specification: In that on 8/30/85 at approximately 1:10 P.M. in the vicinity of the draw section of the Susquehanna River Bridge, you were observed assuming the attitude of sleep.

The hearing took place on September 10, 1985. As a result of the hearing, Claimant was assessed a thirty-five-day suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the suspension.

The Organization contends that the record establishes that Claimant suffered an on-the-job injury on the date in question; Claimant received medical treatment for this injury, including a prescription for pain medication. At 1:10 p.m. that day, Claimant was physically unable to perform his duties because of this injury. At that time, Claimant was tending to his injury, not assuming the attitude of sleep or neglecting his duties. The Organization points out that neither of the supervisors who saw Claimant at the time in question asked Claimant about his physical condition or if he had been injured. The Organization asserts that Claimant failed to prove that Claimant was assuming the attitude of sleep and neglecting his duties.

PA FED BMWE

DEC 28 1987

The Organization therefore argues that the claim should be sustained.

The Carrier contends that there is substantial probative evidence in the record that supports its finding of guilt. Carrier asserts that its two foremen gave concise testimony that Claimant was found lying on the bridge, assuming the attitude of sleep; moreover, other employees testified that they also saw Claimant lying down on the bridge. Carrier disputes the Organization's contention that Claimant was resting because of a knee injury. Carrier points out that at the time he slipped, Claimant told another employee that he was alright; Claimant also did not indicate that he had been injured until after he was removed from service in connection with the instant charge. Carrier also asserts that if Claimant had sustained such an injury, it is incredible that Claimant would have made the difficult descent from the point where he slipped to the point on the bridge where he was found lying down.

The Carrier further argues that there is no merit to the Organization's charge that its foremen did not inquire into Claimant's physical condition; both foremen stated that they saw nothing wrong with Claimant except that he was lying down and soundly sleeping. Carrier contends that the assessed discipline is commensurate with both the nature of the offense and Claimant's prior record; the discipline was not arbitrary, capricious, or excessive. Carrier therefore argues that the claim should be denied in its entirety.

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 the offense with which he was charged.

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. Assuming the attitude of sleep has often led to termination of employment. Consequently, we cannot find that the 35-day suspension issued the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

Award:

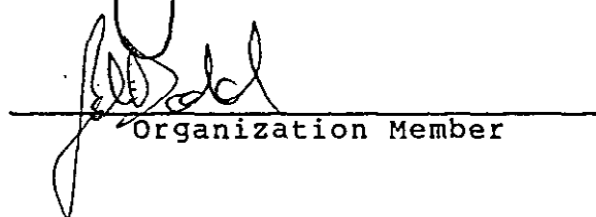
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 12/30/87