

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19786
Docket Number CL-19985

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Norfolk and Western Railway Company

(Involving employees on lines formerly operated by
the Wabash Railroad Company)

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7245)
that:

1. Carrier violated the provisions of the Schedule for **Clerks**, effective May 1, 1953, specifically Rule 28, when on April 20, 1972 it arbitrarily, unjustly and in a" obvious abuse of discretionary authority, dismissed Clerk **J. F. Brooks** from the **service** of the Carrier.

2. Claimant will now be returned to work with all rights unimpaired.

3. **Claimant** will now be paid for all time lost **as** a result of Carrier's harsh and **unjust** action.

4. In addition **to** the **amounts** claimed above, the Carrier shall pay Claimant a" additional amount of one percent compounded monthly.

OPINION OF BOARD: Claimant **was** dismissed from service, after a" investigation, on a charge of sleeping while on duty.

A review of the entire record, including the transcript of the April 13, 1972 investigation, demonstrates that **none** of Claimant's substantive procedural rights were violated.

Claimant denied that he was asleep while on duty, and states that his Supervisor incorrectly appraised the situation. Other witnesses were unable to either confirm **or** deny that Claimant was, in fact, awake or asleep at the time.

It is well settled that this Board shall not attempt to weigh evidence, **or** resolve conflicts therein in its appellate capacity. There is evidence in the record, even though controverted, to support the charge. Accordingly, this Board holds that the Carrier sustained its finding of Claimant's guilt. However, under all of the facts and circumstances presented, the Board is of the view that a permanent dismissal from Carrier's service was not warranted in this case and is **excessive**.

Based upon the entire record the Board finds:

- (1) That discipline was warranted; and
- (2) That permanent dismissal was excessive.

The Board awards that **Claimant** shall be restored to Carrier's service with seniority and other rights unimpaired, but without pay for time lost. There is no agreement support for Item 4 of the Claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of **May**, 1973.