NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:  

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
-and-  
NORFOLK SOUTHERN RAILWAY COMPANY  

AWARD  
Case No. 156  
Claimant T. K. Meledathu

STATEMENT OF CLAIM:

"Claim on behalf of Electrician T. K. Meledathu in Croxton, New Jersey, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Meledathu is unjustly withheld from Carrier's service. We also request his personal record be cleared of the matter."

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Claimant was directed on January 26, 2016, notified Claimant Meledathu to report for a formal investigation on February 8, 2016, to determine his responsibility, if any, for sleeping on duty on January 21, 2016. He had at the time been assigned as an Electrician on the third shift at Croxton Yard, Jersey City, New Jersey. Following postponements, that investigation was conducted on March 15, 2016. On April 1, 2016, Carrier's Manager Car Shop B. S. Allen wrote Claimant, with copies to his IBEW Representatives, announcing that the Company had reviewed the record developed on March 15, 2016, determined that Claimant was guilty as charged, and dismissed him from all Service. That determination was appealed to Carrier's Labor Relations Department on April 12, 2016, and following
denial at that level the Organization’s challenge on Mr. Meledauthus’s behalf was advanced to this Board for final resolution.

According to the record before the Board, on January 20, 2016, Terminal Superintendent C.E. Dumas and Assistant Trainmaster T. Edwards were performing a safety check in Croxton Yard during third shift when Dumas observed a mechanical vehicle parked next to Ramp 1 in the train yard. Seeing the vehicle still there after he had completed his check of the yard, and mindful that there had been no radio communications indicating mechanical work was being done on the NS Locomotive 9862 at the site, Dumas attempted to enter the locomotive but found the door locked. Through the window of the cab, however, he was able to observe someone that

“...appeared to be sleeping on the Conductor’s side of the locomotive. Whoever it was laying with their head toward the desktop of the locomotive and their feet were in the Brakeman chair. I observed the employee for approximately 2-3 minutes before dismounting the locomotive and went to get ATM Edwards to come and confirm what I observed ATM Edwards boarded the locomotive in the same fashion. At this point we both stood and observed this employee in the previous mentioned position for several minutes.

After about five minutes passed by, I knocked on the door as we continued to observe. The employee still didn’t move. At this point I was thinking that there may have been something wrong with the employee, as I tried to wiggle the door open. I then banged on the door 4-5 times and the employee jumped up. The employee was startled by the knock as he literally stumbled out of the seats and headed for the front door of the cab. I then screamed and said, “I’m at the back door” twice, then he came and opened the back door.

According to the witness, when asked whether he had been sleeping the Claimant indicated that “he wasn’t asleep; he was just resting.”

Claimant Meledathu testified at his formal investigation that he and his machinist started working on 211 diesel at 11:30 p.m., finishing around 1:30 a.m. The two men then blue-flagged and inspected the engines of three locomotives, doing power and brake checks and departure tests. Claimant was responsible for downloading the data, which was completed around 3:00-3:15 a.m., but by that time he says he was experiencing painful cramps in his right leg from mounting and dismounting steps in the extremely cold night. Since he states that no specific time was designated for taking his brake, he decided to break in the engine for 30 minutes, locking the door behind him for safety reasons.
While rubbing his leg resting on the Brakeman’s chair he states that he saw Ms. Edward’s vehicle drive by and then return again 10 or 15 minutes later, although neither he nor the machinist heard anyone call them with the train engine running. “So as I opened the door, both of them they came in and Mr. Dumas said I was sleeping. I said I was not sleeping. I was—I was taking my break before I go back to the office. And he insisted again that no, you were sleeping. Then I said to Ms. Edwards, if you say so, I’m sorry.”

The Organization offers a procedural argument at the outset, contending that Carrier failed to comply with Rule 29 – Discipline, Section B1 (a) requiring written notification to attend a formal investigation within ten (10) days from date of occurrence. The events at issue, it asserts, occurred on January 21, but Claimant did not receive notice until February 9. In this case that analysis is mistaken, airbrushing the fact that the charge letter was mailed by certified mail return-receipt requested to Claimant’s address of record on January 26, 2016. As Carrier correctly notes, a confluence of common sense and substantial prior arbitral authority are on Carrier’s side. A written notice dispatched to the employee’s formal address of record within ten (10) days of date of occurrence satisfies the deadline set forth in Rule 29.

While hardly infallible, Carrier also offers substantial compelling evidence to establish that Claimant was either sleeping on duty or in a position projecting to a reasonable person the appearance of sleep on January 21, 2016. The record affords the Board no reliable basis for subverting the credibility determination of Carrier’s Hearing Officer on the point. Nor does the Board quarrel with Carrier’s suggestion that sleeping on duty in this and many other industries is generally a dismissable offense.

Other aspects of the dispute, however, prompt us to pause. The rule offense charged was serious; it shortchanges the business and it has a potentially corrosive effect on the trust that is so critical in the employer-employee relationship. There is, however, not a scintilla of evidence in the record suggesting that what Carrier officials observed in the middle of a cold January night was in any way representative of his past record of performance over his long tenure with the railroad.

Claimant was initially employed by Norfolk Southern on June 14, 1999. His service records reflect two prior disciplinary matters, one Serious rule violation in September,
2015 when his service vehicle accidentally struck a jersey barrier on the engine ramp, and a second Serious approximately two months later when he was assessed a 5-day disciplinary suspension for failing to notify the locomotive department after reviewing an open a trouble report relating to smoke/flames emitted from a locomotive. The incident at issue, accordingly, can hardly be equated with a past history of chronic rule violations.

A majority of the Board concludes that Claimant’s long and satisfactory service should count for something in the context of this dispute. A more measured response would have been appropriate, satisfying Carrier’s insistence on diligence to job duties and at the same time allowing a valuable employee to continue in productive service. Progressive discipline in the form of suspension would have been a proportionate response under the circumstances presented.

The Claimant’s dismissal shall be converted to a disciplinary suspension. Time out of service is to be treated as it normally would be for discipline imposed pursuant to the Agreement and applicable Carrier policy. Back pay is not appropriate under the circumstances, but restoration to service is to be with seniority intact.

A W A R D

The Claim is partially sustained in accordance with the Findings.

James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Decker
Carrier Member

Dated: November 21, 2017