

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332**

Parties to Dispute:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

-and-

**NORFOLK SOUTHERN RAILWAY
COMPANY**

AWARD

Case No. 157

Claimant T. A. Carrico

STATEMENT OF CLAIM:

“Claim on behalf of Student Electrician T. A. Carrico in Roanoke, Virginia, 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 Student Electrician Carrico 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.

In this case, Claimant Carrico was charged with sleeping on duty, conduct unbecoming an employee and absence from his work area without proper authority. Those charges were contested by the Organization and when the dispute remained unsettled in claim handling between the parties it was appealed to this Board for final resolution. For the reasons that follow, the Board concludes Carrier has borne its burden of proof on the charges and that the discipline assessed was proportionate to the offenses charged.

The events at issue occurred on March 10, 2016, while Claimant was assigned as an Electrician on the third shift at the Roanoke Locomotive Shop. At approximately 4:45 a.m., Management Trainee Ryan Knights observed Claimant and his co-worker Electrician

Adam Caldwell lying down at the east end of the lunchroom with the lights turned off.

According to Knights,

...I went upstairs near the east lunchroom to use the restroom and noticed that the lights the east lunchroom were off. Because the east lunchroom lights are always on throughout the night, I had decided to take a look and see why the lights were off. I proceeded to enter into the lunchroom on the west end and turn the lights on at which time I noticed two employees laying down toward the east end and right corner of the room and the door on the east end had a black cloth covering up the window. I started walking toward the employees when the one farther back, identified as Electrician Adam Caldwell, sat up from laying down on the bench and seemed groggy with baggy eyes and nervous. His face also appeared red like he had just woken up/ I also noticed laying on the bench where Mr. Caldwell's head was positioned was an eggshell foam pad. I then approached the second employee who was laying on the floor of the bench in front of Mr. Caldwell and identified him as Electrician Travis Carrico who was still laying on the ground, still laying down with his arm on the bench covering his eyes at the time and had not moved. Once I reached his feet, he woke up, rolled over, and told me he was not sleeping. Like Mr. Caldwell, I also observed him to be groggy and have baggy eyes. Mr. Caldwell reiterated that Mr. Carrico was not sleeping and said that he was a witness in that they were taking and watched me enter the room. As I entered the room and walked towards them, there was no talking or any other noise being made. At the time, both employees stood up and Mr. Caldwell stated that he did not see a problem with having the lights off during the break time. I then informed Mr. Caldwell that it was not yet break time, approximately 4:46 AM by this time, which is scheduled for 5:00 AM until 5:10 AM and is indicated by an automated horn throughout the shop. I also told them that it is not an excuse for having a bed made and lying down and sleeping. I also stated to them that even during breaks, sleeping is prohibited since you are paid for break times and are on company time. After explain this to Mr. Carrico, he made the statement that you are, you are not going, really going to send me home, are you...I then turned to Mr. Carrico and said for his own personal safety that I, that because I did not feel he was fit for his [sic] for the night and was worried he might get hurt because he is tired, that I was sending him home to get proper rest. At this time Mr. Carrico stepped toward me and state in a low and direct tone, which personifying a threatening demeanor, shoulder raised and chest puffed out, that I will not forget this, and proceeded to walk out the break room. I then followed him out of the break room and watched him walk toward the locker room. I then called my Senior General Foreman, Bill Hershel, and informed him of the situation that had just taken place.

Claimant was instructed to attend a formal investigation into these matters on March 23, 2016. Following review of the record of those proceedings, on March 29, 2016, Carrier served Claimant official notice that his employment was being terminated. The Organization's claim on Mr. Carrico's behalf ensued.


Senior General Foreman Hershel testified that upon being notified of these events he met with Electrician Caldwell in the presence of Mr. Knights and two other Foremen at 11:00 a.m., Caldwell denied that he was sleeping but indicated that he and Claimant had commenced their break about ten minutes early on March 10, noticed a foam kneeling pad and had reclined on it to avoid sitting on the hard bench. The record additionally indicates that Hershel found black cloth material draped over the back door closest to where Carrico and Caldwell were observed to be lying down. Caldwell waived his right to a formal hearing and accepted a 30-day deferred suspension, acknowledging responsibility for failure to remain alert and attentive while on duty and being away from his assigned work area without proper authority. For his part, Claimant conceded at hearing that he was lying down with the lights off prior to his break time, but was not asleep and "at no point in time did I...get up in Ryan's face or say anything as a threat."

The record reflects that Claimant was initially hired as a Student Electrician on November 3, 2014. Carrier's evidence, including Claimant's own acknowledgments, establish that he excused himself from work on his own initiative outside of an established break time and took up a prone position on a foam mat with lights out and black cloth hung over the entry door, where he was observed with his eyes concealed under his arms. Claimant's testimony does little to rebut Carrier's assertion that he was "lying down or in a slouched position with eyes closed or with eyes covered or concealed" in clear violation of Section B of Operating Rule 2 – *Prohibited Activities*. Carrier's Hearing Officer additionally credited the testimony of Ryan Knights indicating that he felt threatened by Claimant's response after being observed apparently sleeping on duty. The Board has no reason to second-guess that credibility determination.

In light of Claimant's short service and in the absence of any mitigating circumstances, Claimant's conduct constituted just cause for discharge. On that basis the claim must be denied.

A W A R D

The Claim is denied in accordance with the Findings.


James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Decker
Carrier Member

Dated: November 21, 2017