

BEFORE PUBLIC LAW BOARD NO. 7007

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
MASSACHUSETTS BAY COMMUTER RAILROAD**

Case No. 42

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. Carrier's dismissal of Claimant William Parziale was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.
2. Claimant Parziale shall be reinstated to his position with the Company with his seniority unimpaired and be compensated for all lost wages and benefits which would accrue to him as provided for in the Scheduled Agreement and his record cleared of the charge."

FINDINGS:

By notice dated December 14, 2010, the Claimant was directed to attend a formal investigation and hearing on charges that he allegedly had instructed an employee to foul the track and put a piece of equipment on the track at a location that was not covered by protection, that he allegedly had been a passenger in a vehicle that operated past a stop signal without requesting or receiving permission from the Train Dispatcher, and that he allegedly had falsified an official Carrier document that improperly listed the territory on which he was qualified. The investigation was conducted, after a postponement, on December 30, 2010. By letter dated January 7, 2011, the Claimant was informed that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline the Claimant. The Carrier denied the

claim.

The Carrier contends that the instant claim should be denied in its entirety because the Carrier proved that the Claimant was guilty of violating all of the cited rules as charged, because there are no circumstances that would serve to mitigate the Claimant's responsibility for these offenses, and because the discipline imposed was proportionate to the serious nature of the Claimant's violations. The Organization contends that the instant claim should be sustained in its entirety because the Carrier has failed to meet its burden of proving that the Claimant lied or misled anyone or that he falsified any document, because all that the Claimant did was to have a vehicle pass a red signal, because the normal discipline imposed for this offense is a thirty-day suspension, and because the discipline imposed was disparately harsh and was not based on the facts of this case.

The parties being unable to resolve their dispute, this matter came before this Board.

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 several rule violations, including instructing an employee to foul a track and put a piece of equipment at a location that was not protected, occupying a vehicle that operated past a stop signal, and falsifying official Carrier documents when he bid for a position as a B&B foreman.

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.

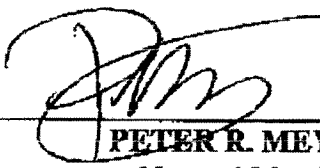
This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

Although fouling a track right through a stop signal might only lead to a thirty-day suspension, as the Organization argues, the Claimant in this case was guilty of a much more serious offense as well. When the Claimant bid for the foreman position, he told the Roadmaster that he was qualified everywhere on the North Side. On his bid sheet, the Claimant made the same representation. Obviously, if the Claimant had been fully qualified on the physical characteristics of the entire territory, he would have not allowed the track to be fouled as he did in this case. The Claimant's falsification of Carrier documents could have led to very serious results.

It is fundamental that an employee is required to be honest when filling out bid documents. In this case, the Claimant was less than that. Given the seriousness of that offense, as well as the other offenses of which the Claimant was properly found guilty, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 10/24/11



ORGANIZATION MEMBER

DATED: 10/26/11