

BEFORE PUBLIC LAW BOARD NO. 7544

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
SOO LINE RAILROAD COMPANY**

Case No. 9

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

1. The discipline (dismissal) imposed upon Mr. A. Jaeger by letter dated April 26, 2010 for alleged violation of GCOR Rules 1.25 and 1.6 was arbitrary, capricious, excessive and in violation of the Agreement (System File D-10-10-610-01/8-00525).
2. As a consequence of the violation referred to in Part (1) above, Claimant A. Jaeger shall now be reinstated ‘ . . . to service with seniority unimpaired and for all lost wages, including but not limited to all straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, seniority and any and all other benefits to which entitled, but lost as a result of Carrier’s arbitrary, capricious, and excessive discipline in dismissing Claimant from service.’”

FINDINGS:

By notice dated March 17, 2010, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with the Claimant’s alleged misuse of a Carrier credit card. The hearing was conducted, after a postponement, on April 6, 2010. By letter dated April 26, 2010, 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 a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because

the Claimant was afforded his due process rights, because substantial evidence supports a finding of responsibility as charged, because the discipline imposed was not unreasonable or excessive given the seriousness of the charges, and because the Carrier did not act in an arbitrary, capricious, or discriminatory manner. The Organization contends that the instant claim should be sustained in its entirety because the Carrier pre-judged the Claimant and failed to provide him with a fair and impartial investigation, because the Carrier failed to prove the charges against the Claimant in this matter, and because the Carrier's decision to dismiss the Claimant was capricious, excessive, improper, and unwarranted.

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 misusing a Carrier credit card in December of 2010 in clear violation of GCOR Rules 1.25 and 1.6. The Claimant admitted during the hearing that he had used the Carrier credit card to pay for repairs on his personal vehicle. Although the Claimant said he "had intentions" to pay for it, he did not make immediate repayment to the Carrier until after he was notified by the Carrier.

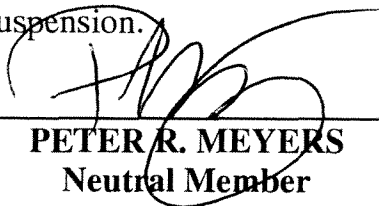
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case had over thirteen years of employment with the Carrier. Moreover, his supervisor testified that "I do believe that he fully well intended to pay that invoice." Although the Claimant did not comply with the rules and repay the Carrier in a prompt fashion, this Board finds that the Carrier acted unreasonably when it terminated the Claimant's employment. The Claimant deserved a lengthy disciplinary suspension, but this Board feels that there was no just cause for his permanent removal from the Carrier.

Therefore, this Board orders that the Claimant be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension for his wrongdoing.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.

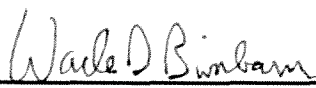


PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/28/2012



ORGANIZATION MEMBER

DATED: 10/12/12