

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 131

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Claim on behalf of D. J. Hedrick for reinstatement to service with payment for all time lost as a result of his dismissal following a formal investigation held on December 14 and 16, 1999, in **connection** with his falsification of payroll on October 7, 1999. (Carrier's File No. MW-FTW-99-107-BB-497.)
2. Claimant Hedrick shall now be reinstated with seniority, vacation, and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning December 4, 1999, and continuing.

FINDINGS:

Claimant D. J. Hedrick was employed by the Carrier as a crane operator at the time of this claim.

On December 7, 1999, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with his falsification of payroll on October 7, 1999.

The hearing took place on December 14, 1999, and concluded on December 16, 1999. On December 29, 1999, the Carrier notified the Claimant that he had been found guilty of **all** charges and was being assessed discipline of dismissal from all service with the Carrier.

The Organization tiled a claim on behalf of the Claimant, arguing that the

investigation in this case was actually a continuation and duplication of an investigation that took place on December 3, 1999. The Organization asserts that the hearing officer from the earlier investigation served as the charging officer in this investigation and that certain witnesses from the earlier hearing served in the same capacity in this case, which concerns the same date and circumstances as the previous investigation. The Organization also contends that, in this case, the exhibits and witnesses' testimony is tainted as a result of a mock investigation that was conducted prior to the previous investigation. Therefore, the Organization claims, the Claimant was not afforded a fair and impartial investigation. The Organization argues that the investigation in this matter was clearly an attempt to persecute the Claimant. The Organization contends that the Carrier subjected the Claimant to "double jeopardy" when it dismissed the Claimant as a result of the December 3, 1999, investigation, and then again dismissed the Claimant as a result of this investigation. The Organization alleges that the Carrier simply attempted to justify the discipline of the Claimant issued as a result of the December 3, 1999, investigation by coming up with a different theory for the same circumstances when it conducted this investigation. The Organization maintains that due process does not permit an employee to be exposed to double jeopardy.

The Carrier denied the claim. The Carrier argues that there is no rule or practice that prohibits the Carrier from scheduling an investigation based on information provided in a previous investigation. The Carrier also claims that the mock investigation referred to by the Organization in the previous investigation has no relevance to this case since it

was not in connection with the falsification of payroll by the Claimant. However, the Carrier argues that it is not prohibited from talking to witnesses prior to a hearing. In addition, the Carrier contends that the investigation that took place on December 3, 1999, involved the Claimant being absent from his assignment without permission on October 7, 1999, and that the investigation in this case concerned the Claimant's falsification of payroll for the same date. The Carrier argues that since two separate offenses are involved, the concept of double jeopardy cannot apply and it was entirely proper for the Carrier to proceed with a separate investigation. The Carrier further argues that the Claimant was properly notified and afforded a fair and impartial investigation as provided for in the schedule agreement. The Carrier contends that it was not until the Claimant testified in the December 3, 1999, investigation that he entered time into the payroll for October 7, 1999, that the Carrier became aware that the Claimant had falsified his payroll. The Carrier maintains that the Claimant's foreman and supervisor testified that the Claimant was not seen or accounted for on October 7, 1999, and yet claimed compensation for that day. The Carrier contends that the Claimant entered payroll data for October 7, 1999, indicating that he worked ten hours when, in fact, he performed no service for the Carrier on that date. The Carrier also alleges that the Claimant stated that if he entered additional hours for the date in question, it was due to his contention that he was due make-up time for having worked excessive hours on other days and not having been compensated for same. The Carrier maintains that the Claimant never received permission to put in make-up time, nor did the Claimant ever submit any concrete

evidence that he was due any make-up time. The Carrier argues that the Claimant actually did not enter any make-up time codes on his payroll for October 7, but showed all time as time worked. The Carrier asserts that the Claimant attempted to defraud the Carrier by entering hours into his payroll for a day he performed no service. The Carrier claims that the evidence adduced at the investigation clearly established that the Claimant falsified his payroll on October 7, 1999, and that the dismissal assessed was wholly appropriate considering the nature of the offense and the Claimant's past discipline record, which includes two previous dismissals.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

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 falsifying the payroll in that he entered ten hours of time worked into the payroll system for October 7, 1999, when he in fact did not work on that date. The record reveals that the Claimant was scheduled to operate the crane in connection with a bridge project that day and he never showed up. The Claimant then entered his time into the payroll system in order to be paid.

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 action to have been unreasonable, arbitrary, or capricious.

Given the seriousness of the offense of which the Claimant was found guilty in this case, coupled with the fact that the Claimant had been previously dismissed only seven months prior to this incident, this Board cannot find that the Carrier's action in terminating the Claimant's employment in this case was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 5/18/01



ORGANIZATION MEMBER

DATED: 5-18-01