

-2-

hearing resulted in Carrier believing that he was guilty of the charges which specified that he had allegedly accepted compensation from an outside firm in the amount of \$1300 for track repair work on the spur track in this outside concern's property and also for allegedly falsifying a Carrier questionnaire on February 12, 1982. For these infractions he was dismissed from service.

Carrier alleges that the record is clear that Claimant provided men and repairs without authority to an outside industry in the repair of that company's spur tracks using Carrier's personnel and equipment for that purpose. He then retained the proceeds from that work in addition to falsifying the questionnaire. Carrier also indicates that the district Maintenance of Way Manager (since retired) and Carrier's Material Planner (also retired) were involved with Claimant in this fraudulent activity. The work in question was performed on May 11, 1981 and the questionnaire was filled out some six months later. Carrier believes that the dishonesty explicit in this transaction by a trusted supervisor is wholly intolerable and the claim should be denied.

Petitioner insists that the sole evidence that the Carrier used was a cancelled check made payable to Claimant and deposited in his bank account. That check which was admitted by Claimant was

-3-

never explained fully in the hearing by either party. According to Petitioner there is no evidence whatever that Claimant performed any work for the outside company whatsoever. Furthermore, Petitioner notes that it took nearly five years for Carrier to bring charges against Claimant which made a proper defense almost impossible.

A careful examination of the record of this case involves obscure testimony and considerable confusion. It is evident that the Claimant did indeed receive a check even though he disclaims any knowledge of it at this time and it was during a period of personal difficulty unrelated to his work activities. He insists that the check constituted a loan from the former district Maintenance of Way Manager. In view of the nature of the evidence in this dispute and the type of transgression involved, the Board reluctantly must assume that Carrier has failed to establish clearly the basis for its decision and discipline. Even though Claimant obviously used at best poor judgment in accepting payment for whatever purposes some five years prior to the investigation, that does not establish the fraud which Carrier suggests was involved. While the Board is aware of Carrier's concern and proper action with respect to dishonesty of any kind, it is particularly appropriate when a supervisor and trusted employee is involved. In this instance, however, in view of Petitioner's long service with Carrier and the obscurity of the

-4-


offense, it is believed that dismissal was excessive as a penalty. It is this Board's judgment that Petitioner should be reinstated to his former position as a Track Foreman but receive no pay for time lost. That time lost together with his demotion from an officer's status is a sufficient penalty for the at least poor judgment that he used in 1982. He should never again be a position where any question concerning his integrity is raised or, if that did occur, dismissed forthwith.

AWARD

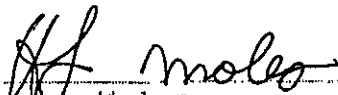
Claim sustained in part. Claimant should be reinstated to his former position of Track Foreman with all rights and seniority unimpaired but without compensation for time lost which shall be considered to have been a penalty for his transgression.

ORDER

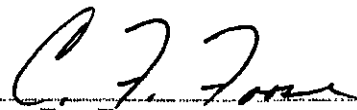
Carrier will comply with the Award herein within thirty (30) days of the date hereof.



I. M. Lieberman, Neutral-Chairman



H. L. Moles,
Carrier Member



C. F. Foote,
Employee Member

San Francisco, California

May 1988

June 3