

Public Law Board No. 2778

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Baltimore and Ohio Railroad Company

STATEMENT
OF
CLAIM:

1. The dismissal of F. A. Phillips, Foreman-Trainee, was without just and sufficient cause and in violation of Rule 48 of the Schedule Agreement dated October 1, 1968.
2. F. A. Phillips should be allowed the remedy of Rule 48(e) or (f) of said Agreement.

FINDINGS:

There is substantial credible evidence, consisting of testimony by Track Foreman Pardida and Supervisor Rosier, that supports Carrier's findings that claimant left work about four hours before quitting time on October 20, 1978, and did not work at all on October 24, 1978. He nevertheless prepared and filed time sheets that allowed him full time on both days. Claimant did not deny leaving his work at about noon on October 20 and admitted that he did not work at all on October 24. When asked why he had prepared time sheets showing a full day's

work on each of those dates, he testified:

"I don't have any idea really.
Maybe it is a mistake on my part.
I have no idea. If it was a mistake,
it was an honest mistake."

Ordinarily dismissal would not be unwarranted in this setting; no reasonable explanation has been offered for claimant's time sheet misrepresentations. In the present case, however, claimant actually received less than one day's notice of hearing. It is true that Carrier mailed the notice seven days before the hearing was held but a week end and a holiday intervened and claimant did not actually see the notice until he picked it up at the Post Office on the sixth day.

The Local Chairman raised an objection to the sufficiency of the notice at the very outset of the hearing and Carrier should have given claimant more time to prepare his defense in a case that could reasonably involve a substantial loss of pay.

We will not set aside Carrier's decision to discipline claimant severely, particularly since claimant was represented by his Local Chairman and the notice of hearing was mailed seven days before the hearing date. Carrier will be directed, however, to reinstate claimant without back pay since a dismissal decision must be based on procedures that, as a matter of substance, have given the employe under charges a fair opportunity to present his case.

AWARD:

Claimant reinstated with seniority unimpaired but
without back pay. To be effective within 30 days.

Adopted at Baltimore, Maryland, February 2, 1983.



Harold M. Weston, Chairman


Carrier Member
Employee Member