

PUBLIC LAW BOARD NO. 3460

Award No. 34
Case No. 34

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of Machine Operator J. A. Russell, October 17, 1980, was without just and sufficient cause and is wholly disproportionate to the alleged offense.
2. Machine Operator J. A. Russell be reinstated to service with all rights unimpaired, his record cleared, and paid for all time lost."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant was employed on April 14, 1977, by Carrier. He had bid for and been awarded a Group 1 Machine Operators position on July 3, 1980. In August, 1980, claimant requested authority to be absent from duty for personal business (to attend court) on August 21 and August 22, 1980, a Thursday and Friday. At the time of this entire matter, claimant was living and working away from his headquarters point in Carrier facilities or in a motel. On September 5, 1980, claimant's August 1980 expense account was received and a discrepancy was discovered in that he claimed expenses for August 21 and 22, the two work days he had laid off, as well as August 23 and 24, the rest days of his assignment. Based on this fact, claimant was charged with falsifying his expense account for August in violation of certain Carrier rules and was furnished with a notice of investigation dated September 10, 1980. Following the investigation, claimant was dismissed from service by letter dated October 17, 1980. A claim on his behalf was submitted to the superintendent appealing his dismissal on November 7, 1980. Subsequently,

the claim was listed for a Public Law Board on December 4, 1981 (after being discussed with Carrier's designated officer on July 6, 1981).

Carrier takes the position, first, that this case and dispute should be dismissed based on the Doctrine of Laches. Carrier argues that the matter was allowed to remain dormant for almost two years by the Organization following the final handling on the property before being taken in fact to a Public Law Board. With respect to the merits, Carrier insists that there is no doubt but that claimant was guilty of falsifying his expense account on the days he was not on duty and, therefore, was guilty of the charges. In view of the seriousness of the infraction, according to Carrier, claimant should have been dismissed.

Petitioner, on the other hand, insists that the claim was timely filed and that there were numerous improprieties on the part of the Hearing Officer at the investigation. In addition, the Organization argues that claimant was newly assigned to his position and had never before been required to file expense reports. He had barely been in his new job (for a period of less than two months) when the incident occurred. His testimony was that he was not aware of the procedures and was not informed of the methods used to file such reports properly until after the incident herein. He was also not permitted the latitude of correcting his expenses when his error was pointed out to him but was merely charged with the infraction. Petitioner insists that it was an honest mistake on his part which resulted in the incident.

While the Board is aware of the problems associated with delays in the handling of claims such as this, in this instance it does not believe that the Doctrine of Laches should apply. The time frame involved was not so severe as to require the application of that principle. In short, the Board considers this to be a borderline situation but not one which warrants dismissal since there was no overt violation of a rule by the delays. Similarly the record does not support petitioner's complaints with respect to irregularities in the hearing process negating the findings.

From the record it is clear that claimant filed an improper expense account on the day in question amounting to a claim for some \$73 in expenses to which he was not

entitled. Whether this was an honest mistake or not, the Board cannot determine. A serious breach it was in any event. The Board must concur, therefore, with the findings made by Carrier's Hearing Officer in that claimant was guilty of the charges. In the Board's view, however, the penalty of dismissal under the particular circumstances of this matter was inappropriate. As in other situations, the Board notes that the degree of penalty depends upon the nature of the offense. There are differences between petty larceny and major thefts. In this instance, while recognizing that dishonesty was at the heart of Carrier's conclusion, it is believed that the penalty of dismissal in this particular case was harsh and unnecessarily severe for the particular infraction. For that reason, Carrier must reinstate claimant forthwith to his former position with all rights unimpaired but, in view of the guilt findings, there will be no compensation for time lost which will be considered on the record as a disciplinary layoff. It is noted that claimant shall have thirty days from the date of notification by Carrier within which to return to work if he desires to protect his position.

AWARD

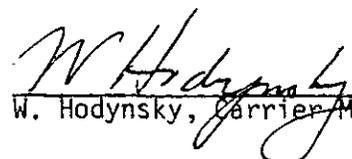
Claim sustained in part; claimant shall be offered reinstatement to his former position with all rights unimpaired but without compensation for time lost. He shall have thirty days in which to respond to the offer of reinstatement, after which it shall lapse.

ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


F. H. Funk, Employee Member


W. Hodynsky, Carrier Member

St. Paul, Minnesota

March , 1986