

SPECIAL BOARD OF ADJUSTMENT
PUBLIC LAW BOARD NO. 3729

CONSOLIDATED RAIL CORPORATION
"CARRIER"

and

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES
"ORGANIZATION"

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CASE NO. 9

AWARD NO. 5

STATEMENT OF CLAIM

Claim of the Brotherhood (CR-659-D) that:

"A. The dismissal of Anthony Washington, Track Foreman, is without just and sufficient cause on unsupported and arbitrary charges, and an abuse of management's prerogative in disciplining the Claimant.

B. Claimant Washington shall be reinstated without loss of compensation, including overtime, seniority, vacation rights, and all benefits to which he is entitled due to his length of service."

This case arose when the Carrier charged Anthony Washington, hereinafter the Claimant, with falsifying work reports and payroll records. The specific charges, contained in a Notice of Investigation dated February 27, 1984, were as follows:

- "A. Falsification of Daily smoothing gang reports for February 6, 1984 and February 9, 1984 in which you reported delays and work accomplished by gang #1573 operating Tamper #ME3012 in a telephoned report to the Philadelphia Division Engineer's Office, when in fact no work was performed on these dates due to your absence.
- B. Falsification of payroll records for the dates of February 6, 1984 and February 9, 1984 when you instructed the payroll clerk in the Philadelphia Division Engineer's office to record eight (8) hours straight time plus four (4) hours travel time to be paid to you for both dates, when in fact you were absent on February 6, 1984 and February 9, 1984."

The hearing was held on March 6, 1984. The Claimant was present and represented by the Organization. By notice dated March 15, 1984, the Carrier notified the Claimant that he had been found guilty of the charges and was disciplined by "dismissal in all capacities."

The above quoted claim was then filed on behalf of the Claimant. It was processed on the property and denied by the Carrier. This Board heard argument concerning this claim on September 12, 1985. The Organization properly notified the Claimant of the Board hearing but he did not attend.

In February, 1984, the period of the incident giving rise to this claim, the Claimant was a foreman with eleven years of service with the Carrier. The Carrier allegedly telephoned the Division Engineer's office and reported work he had done on February 6 and 9, 1984, when the Claimant was absent those

days and performed no work. In addition, the Claimant allegedly told the payroll clerk to record eight hours straight time and four hours travel time for February 6 and 9, when he was absent.

POSITION OF THE PARTIES

The Carrier submits that the transcript of the Claimant's hearing contains substantial, credible evidence of his guilt. Witnesses clearly testified that the Claimant reported he worked and claimed pay for the two days on which he was absent. The Claimant's notification to the Carrier of the discrepancies in his paycheck was merely an afterthought taken after he was held out of service. As dishonesty is a dischargeable offense, the claim should be denied.

The Organization maintains that the evidence is insufficient to support the charges. The Claimant's guilt is centered on reports that he had no opportunity to review for accuracy. These records, and key witnesses called by the Carrier, had many deficiencies. Furthermore, a doctor's note submitted by the Claimant stated he was absent on February 7, not 6, and the Claimant voluntarily reported he had been overpaid for the period.

OPINION OF THE BOARD

The Board has concluded that the record contains substantial, credible evidence to support the Carrier's finding that the Claimant was guilty of the charges. Direct testimony, as well as records, supported the allegations that the Claimant

took actions to receive pay for time he did not work. The doctor's note and report of overpayment by the Claimant, even if truly voluntary and not motivated by fear of being caught, were insufficient to rebut the Carrier's evidence.

This Board has further determined that the claim should be denied. The hearing was properly conducted and no change in the Carrier's assessment of discipline is warranted in view of the seriousness of the proven offenses.

AWARD

Claim denied.

S. Buchheit 11-5-85
S. BUCHHEIT
Neutral Member

R. O'Neill
R. O'NEILL
Carrier Member

J. P. Casese 11-6-85
J. P. CASSESE
Organization Member