

PUBLIC LAW BOARD NO. 4225

Claimant - S. M. Huck  
Award No. 2

Case No. 2

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Union Pacific Railroad

STATEMENT  
OF CLAIM

That the Carrier's decision to suspend Claimant from its service for a period of fourteen (14) days, was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant is a Ballast Operator for the Union Pacific Railroad Company. On December 16, 1987, while he was off duty, there was a disturbance in his house and the neighbor called the

police. During their search of the residence the police discovered a substance which was subsequently tested and determined to be amphetamines. Even though the police tried to bring charges against the Claimant for possession of an illegal substance, the District Attorney ruled the evidence against the Employee was deficient.

The following week, the Claimant called in to report he had worked on December 22, 1987, when in fact he had not.

As a result of these two incidents the Company notified the Claimant he would be charged with violating General Rules G, L, 604, and 607 from Form 7908, revised 5/85 and 4/86. The investigation was held on January 15, 1988.

Following the investigation, the Carrier determined there was sufficient evidence to find the Employee guilty of the following rules:

Rule 604: Duty -- Reporting or Absence:  
Employees must report for duty at the designated time and place. They must devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority.

Rule 607: Conduct: Employees must not be:

2. Negligent;
4. Dishonest

The Claimant was dismissed from service for a period of fourteen (14) days.

The Board has difficulty believing the Employee's claim that he simply did not know how to call in his time. He had been doing it for two weeks and should have been well aware of

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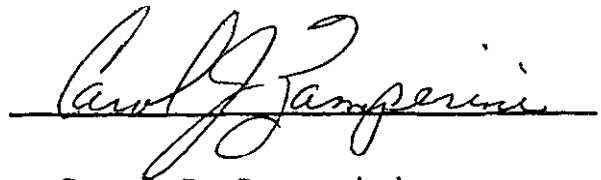
whether or not he worked on December 22. There is at best a fine line, if any at all, between falsifying reporting time and theft. When someone attempts to get money from his/her employer without having performed the appropriate service, it is at least dishonest. In this regard, the Board believes the Carrier has proved the charges against the Claimant.

While an employee's good record can often serve to mitigate a penalty, a questionable record only serves to support it. The Board believes the latter to be true in this case.

For the reasons discussed above, the penalty issued is appropriate.

AWARD

The Claim is denied.

A handwritten signature in cursive script, reading "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini  
Neutral

Submitted:

June 15, 1989  
Denver, Colorado