

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 37

Case No. 37

System Docket No. BMWE-249D

STATEMENT OF CLAIM

(a) Carrier's dismissal of Claimant Gary Bullerwell was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Bullerwell shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

FINDINGS

The Claimant was directed to appear at an investigative hearing under the following charge:

It is alleged that you engaged in an attempted act of misappropriation, and were dishonest when you advised both Roadmaster D. Rodricks and the Payroll Department that you were not paid for March 17, 1995. After you were informed that your time card showed you were absent, Code 62, on March 17, 1995, you proceeded to submit a new

time card for payment (at a higher rate of pay than you were entitled to).

When you were confronted with the fact that your Foreman D. Bertini had documented your absence on the date you then indicated that you had worked for Foreman Harris on March 17. However, Foreman Harris did not work on that date. Further, you did not work for Foreman Bertini.

The Claimant was also subject to a second charge, but the hearing officer did not find sufficient proof of guilt in this instance. The Claimant was subsequently dismissed from service, based on the first charge.

The Board finds also that there is insufficient proof of the Claimant's responsibility for seeking a higher rate of pay to which he was not entitled.


The principal issue concerns the Claimant's request for pay for March 17, 1995, after he found his pay check eight hours "short" for that week. While the Claimant may initially have forgotten that, in actuality, he did not work on March 17, the extensive investigation and record demonstrate that he was advised of this but nevertheless improperly pursued his attempt to receive pay for the day. He even went so far as to claim that he had worked that day for his regular Foreman, who in fact did not himself work that day.

The Board concurs with the Carrier that the Claimant's action was an offense warranting dismissal. If there is any doubt as to the severity of the penalty, it is noted that this short-term employee had previously received discipline for a similar offense.

The Board has no basis to dispute the Carrier's judgment in this instance.

A W A R D

Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 1-11-96