

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5564

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
and) Case No. 29
NORTHEAST ILLINOIS REGIONAL COMMUTER) Award No. 23
RAILROAD CORPORATION)
_____)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
J. P. Finn, Carrier Member

Hearing Date: January 7, 2009

STATEMENT OF CLAIM:

- (1) The discipline of dismissal from service effective March 13, 2008, imposed upon Mr. D. Estrada for his alleged ending his tour of duty at 3:15 p.m. on Thursday, January 17, 2008 without authority was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (Carrier File 08-7-553).
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority unimpaired, his record cleared of the charges leveled against him and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5564 upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On January 22, 2008, Carrier instructed Claimant to report for a formal investigation on January 29, 2008, concerning his alleged ending his tour of duty on January 17, 2008, at 3:15 p.m. without proper authority; his alleged failure to follow instructions; and his alleged failure to record the correct hours worked on his daily work report; in violation of Rules Q, Paragraph 1, and N, Paragraph 3, Items 3 and 4. The hearing was postponed to and held on February 22, 2008. On March 13, 2008, Carrier notified Claimant that he had been found guilty of the charges and dismissed from service. On March 24, 2008, Carrier reinstated Claimant to service with seniority unimpaired. At issue in this claim is whether Claimant is entitled to be compensated

for wage loss suffered during the period that he was out of service.

The record reflects that Claimant was scheduled to work from 7:00 a.m. to 3:30 p.m. on January 17, 2008. However, at 3:15 p.m. on that date, Claimant was discovered taking a shower. The Organization maintains that Claimant was acting properly. The Organization urges that Claimant's job duties exposed him to dirt and oil, that Carrier realized this and condoned employees taking time to clean up as needed during their shifts. However, what the record reflects was that Carrier condoned employees washing their hands as needed during their shifts. There is a significant difference between taking a short break to wash one's hands and then returning to the performance of work tasks, and ending one's work and taking a shower. Claimant clearly was no longer available to perform service at 3:15 p.m. and he lacked authority to quit work early.

The record further reflects that despite quitting work fifteen minutes early, Claimant reported on his daily work report that he worked until 3:30 p.m. That entry was clearly false. Moreover, the record reflects that on December 10, 2007, Claimant submitted a time sheet claiming to have begun work at 1:00 p.m., whereas his assigned start time was 2:00 p.m. On December 11, 2007, Claimant's supervisor met with him and instructed him to submit accurate time reports in the future. The supervisor followed up with a letter confirming the instruction the following day. Claimant clearly disregarded these instructions when he submitted a false time report for January 17, 2008. We conclude that Carrier proved the charges by substantial evidence.

The Organization raises a number of procedural objections. It argues that Carrier violated the Agreement by withholding Claimant from service pending investigation. Rule 32(a) expressly provides, "Suspension from service pending charges and hearing is permissible in major offenses." Certainly, dishonesty and insubordination, two of the offenses with which Claimant was charged, are major offenses. We find no violation in this regard.

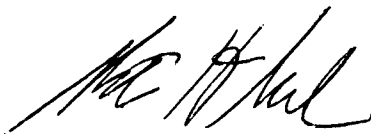
The Organization further argues that Carrier improperly denied Claimant an unjust treatment hearing which he requested when he was withheld from service. Rule 32(c), however, expressly provides that such unjust treatment hearings do not apply to "the appeal of Carrier decisions made pursuant to this Rule, which must be progressed in accordance with the provisions of Rule 33." Again, we find no violation.

We have considered the other procedural objections raised by the Organization. We need not discuss them in detail. It is sufficient to note that we have concluded that they do not lack merit.

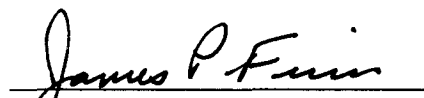
Carrier proved that Claimant disregarded instructions and was dishonest by claiming time that he did not work. Given the seriousness of the offenses, aggravated by his ceasing work early without authority, we cannot say that the penalty of dismissal, followed by reinstatement resulting in two months out of service, was arbitrary, capricious or excessive.

AWARD

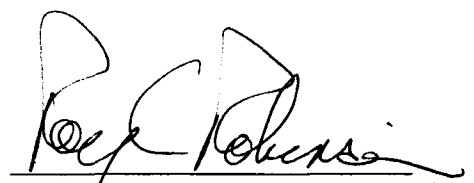
Claim denied.



Martin H. Malin, Chairman



J. P. Finn
Carrier Member



R. C. Robinson, Employee Member
Employee Member

Dated at Chicago, Illinois, May 8, 2009