

BEFORE PUBLIC LAW BOARD NO. 5600

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Case Nos. 1 & 2

STATEMENT OF CLAIM: Claim of the Brotherhood:

1. The dismissal of IETO J. E. Farmer for allegedly being unavailable for service on the dates of June 30, July 2, 3, 4 and 5, 1991 was without just and sufficient cause and on the basis of unproven charges (System File SAC-5-91/MM-6-91).
2. The dismissal of IETO J. E. Farmer for allegedly not performing inspections and lubrications at the beginning of the first shift on July 9, 1991 was arbitrary, capricious, unwarranted and on the basis of unproven charges (System File SAC-6-91/MM-7-91).
3. 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 charge leveled against him and he shall be compensated for all wage loss suffered.
4. 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 charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Prior to his dismissal, the Claimant was employed by the Carrier as a truck driver with seniority going back to August, 1987.

On July 10, 1991, the Claimant was notified to appear for a hearing to determine whether or not he was guilty of being unavailable for service when called on June 30, July 2, 3, 4 and 5, 1991 to report for work as an extra employee. Claimant was found

guilty as charged and based on his poor disciplinary record, which included discipline for the same charge, he was dismissed from service effective July 25, 1991.

On July 9, 1991, the Claimant was notified to appear for a hearing to determine whether or not he was guilty "for allegedly not performing inspections and lubrications at the beginning of the 1st shift on July 1, 1991, in that the hydraulic fluid reservoir on CTEC 723 was found to be lacking approximately 200 quarts of hydraulic fluid..." The Claimant was again found guilty and again dismissed from service on July 25, 1991.

The parties were not able to resolve the issues, and therefore this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. We find the notice of charges to be specific enough to afford the Claimant and the Organization due process.

With respect to the merits on Case No. 1, this Board has reviewed the evidence and testimony in this record and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Rule X which requires employees to be available as needed and subject to call. At the hearing, the Carrier presented sufficient evidence that the Claimant was on standby status and was subject to call for work as an extra employee on June 30, July, 2, 3, 4 and 5, 1991. The Claimant was not available for those calls. The Claimant did not refute his absenteeism nor the accuracy of the Carrier records.

Rule X provides:

Employees must report for duty at the prescribed time and must not absent themselves from duty nor engage a substitute to perform their duty, nor change duties with others without permission from the proper officer. Employees must have their current address and telephone number recorded at the office out of which they are working.

Employees are required to promptly inform their supervisors of any change in name, address, or telephone number.

An employee subject to call must not absent himself from his usual calling place without notice to those required to call him and must ensure that in any case he can be contacted for a call to duty.

Once this Board has determined that there is sufficient evidence to support the finding that the Claimant was guilty of the charges, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

This Carrier operates on a demerit system and the Claimant's personal record indicates that he had accumulated a total of 95 demerits prior to this incident. His last 15 demerits were issued for a Rule X violation in which he was unavailable for service June 17, 18, 19, 20, 21, and 22, 1991. Consequently, this incident, which involved his unavailability for service in late June and early July, brought him over the 100 demerit maximum.

The Claimant's personal record reveals that he was disciplined for unavailability


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for service in April, May, June, August, and September of 1989, and twice in July of 1991. Given that previous record, this Board cannot find that the Carrier's action in dismissing the Claimant was unreasonable, arbitrary or capricious. Therefore, the claim in Case 1 will be denied.

With respect to Case 2, since this Board has now upheld the Claimant's discharge in Case #1, Case #2 becomes moot. The Claimant was properly dismissed in Case #1, and therefore, there is no reason for us to review Case #2 other than to deny the claim.

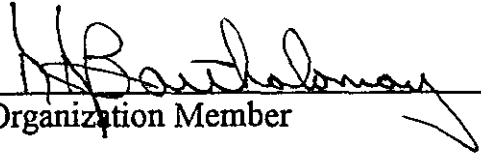
AWARD

Claims denied. The dismissal of the Claimant is upheld.


PETER R. MEYERS
Neutral Member


Carrier Member

DATED: 10/4/94


Organization Member

DATED: 10-13-94