

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 10
)
) Award No. 11
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. M. Gevaudan, Carrier Member

Hearing Date: September 29, 2000

STATEMENT OF CLAIM:

1. The dismissal of Trackman J. M. O'Meara resulting from four investigations held October 8, 1999, was without just and sufficient cause.
2. As a consequence of the violation referred to in Part (1) above, Claimant's record shall be cleared and he shall be allowed to return to work immediately, with compensation for all lost wages.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all 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 September 30, 1999, Carrier notified Claimant to report for four separate investigations on October 8, 1999. The investigations concerned Claimant's allegedly having left derails on at the Joint Lead in North Chicago at the end of his tour of duty on September 24, 1999, allegedly having removed the keys to Truck 525 from Carrier's property on September 24, 1999 and having failed to report for duty on September 25, 1999, allegedly having assumed the attitude of sleep and allegedly having falsified his daily report on September 23, 1999, and allegedly having failed to provide proper flag protection for Catalytic Products International workers who were working on the Joint Lead in North Chicago on September 23, 1999. The hearings were held as scheduled. On October 18, 1999, Carrier advised Claimant that he had

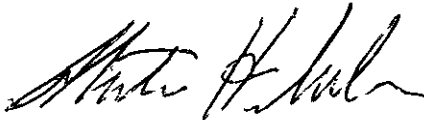
been found guilty of the charges. Carrier assessed Claimant five demerits for leaving the derails on at the Joint Lead, fifteen demerits for leaving the property with the key to Truck 525 and failing to report for duty, forty demerits for sleeping and falsifying his daily report and sixty demerits for failing to provide proper flag protection. These assessments, when combined with demerits already on Claimant's discipline record, brought his total to 125 demerits. Pursuant to Carrier's policy that an employee who accumulates 100 demerits is dismissed from service, Carrier dismissed Claimant.

There is no question that Carrier proved all of the charges by substantial evidence. Indeed, Claimant admitted each of the violations during the investigations. The only issue is whether the penalties assessed were arbitrary, capricious or excessive. The Organization contends that Claimant should be reinstated and given one last chance to demonstrate that he can be a reliable productive employee.

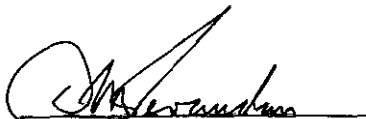
The Board cannot agree with the Organization's position. Claimant's sleeping on duty and failure to provide proper flag protection are particularly serious. The latter could have resulted in a serious accident causing injury or death to the unprotected workers. The other violations may not have been as serious, but they were assessed demerits in proportion to their severity. Under these circumstances, we see no basis to disturb the discipline imposed.

AWARD

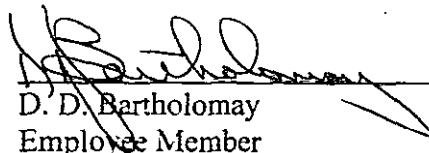
Claim denied.



Martin H. Malin, Chairman



D. M. Gevaudan
Carrier Member



D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, December 28, 2000.