

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**GARY RAILWAY COMPANY (formerly
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY)**

)

) Case No. 43

)

) Award No. 37

)

)

Martin H. Malin, Chairman & Neutral Member
T. W. Kreke, Employee Member
J. F. Ingham, Carrier Member

Hearing Date: June 11, 2009

STATEMENT OF CLAIM:

1. The dismissal of Track Foreman Dean C. Shapley for violation of Rules 0.4, 0.7, 1.15, 1.22, 1.26, 1.27, 1.46 and 22.8 in connection with falsely reporting time for September 12, 2008, is unjust, unwarranted and in violation of the Agreement (Carrier's File UM-15-08).
2. As a consequence of the violation of Part (1) above, Mr. Shapley shall be entitled to the remedy provided for in Rule 57(c) of the Agreement.

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 19, 2008, Carrier directed Claimant to report for an investigation on September 28, 2008, concerning his alleged violation of Maintenance of Way Rules 0.4, 0.7, 1.15, 1.22, 1.26, 1.27, 1.46 and 22.8, in connection with falsely reporting time on his Foreman's Daily Report on September 12, 2008. The hearing was held as scheduled. On October 1, 2008, Claimant was notified that he had been found guilty of the charge and dismissed from service.

There is no dispute that the Foreman's Daily Report that Claimant filed for September 12, 2008, reported time that was not worked by Claimant or the employees under his supervision. Claimant testified that he completed the report early in his shift, estimating the amount of time that the tasks assigned to the gang would take. He intended to correct any inaccuracies in his estimate before submitting the report, but, in his haste to submit the report and leave, neglected

to do so. The report he submitted also failed to include the project identification numbers, something else Claimant failed to do in his haste to depart. Furthermore, Claimant testified without contradiction that frequently in the past he had submitted incomplete or inaccurate reports which were returned to him for completion or correction.

On the record thus presented, we conclude that Carrier proved the charges by substantial evidence in that Carrier proved that Claimant was grossly negligent with respect to his responsibilities to file accurate Foreman's Daily Reports. However, we conclude that Carrier did not prove that Claimant was intentionally dishonest.

In light of the above findings, considering all of the surrounding circumstances, we hold that the penalty of dismissal was excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time out of service. Furthermore, in light of his gross negligence, Claimant shall be disqualified as a Foreman until such time as he may requalify.

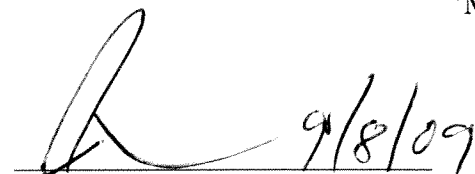
AWARD

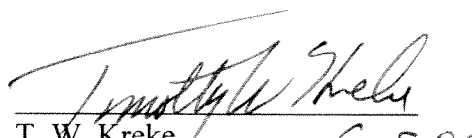
Claim sustained in accordance with the Findings.

ORDER

The Board having determined that an award favorable to Claimant be issued, Carrier is ordered to implement the award within thirty days from the date two members affix their signatures hereto


Martin H. Malin, Chairman


J.F. Ingham
Carrier Member


T. W. Kreke
Employee Member 9-8-09

Dated at Chicago, Illinois, September 1, 2009.