NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)
	) Case No. 8
and	)
	) Award No. 7
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY	)

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

Hearing Date: April 20, 2000

STATEMENT OF CLAIM:

1. The dismissal of Super Truck Operator J R Harris for his alleged violation of Maintenance of Way Rule 1.22 in connection with absences on January 8, 12, 26 and February 1, 1999 was exceedingly harsh and unjust punishment (System File SAC-4-99/UM-5-99).

2. As a consequence of the violation referred to in Part (1) above, the Claimant shall be returned to duty.

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 February 2, 1999, Carrier notified Claimant to report for an investigation on February 8, 1999, concerning his "allegedly violating Maintenance of Way Rule 1.22 in connection with your absences on the following dates: January 8, 1999 - off 8 hours; January 12, 1999 - off 8 hours; January 26, 1999 - off 8 hours; February 1, 1999 - off 8 hours." The hearing was held as scheduled. On February 11, 1999, Carrier advised Claimant that he had been found guilty of the charges and had been assessed sixty demerits which, when combined with demerits already on Claimant's discipline record brought his total to 155 demerits. Pursuant to Carrier's policy that an employee who accumulates 100 demerits is dismissed from service, Carrier dismissed Claimant.

The facts are not in dispute. On December 23, 1998, the Maintenance Supervisor held a monthly safety meeting during which he warned that absenteeism and tardiness would not be tolerated and stated that the employees would receive one chance after which they would be sent home. Claimant attended that meeting.

On January 5, 1999, Claimant was tardy and was verbally warned that future tardiness would not be tolerated. On January 8, Claimant was tardy and was sent home. On January 12, Claimant called in, stating that he had overslept and that he would not make it in to work. On January 26, Claimant called and left a message that he was tired and was not going to show up for work. On February 1, Claimant called and stated that he was locked out of his apartment and could not make it to work on time. There is no dispute that Claimant was guilty of the violation charged.

The Organization contends that the punishment imposed was excessive. It maintains that Claimant should not have been dismissed. However, the punishment imposed was not dismissal; it was the assessment of sixty demerits. It was the combination of that punishment with the ninety-five demerits already on Claimant's record that resulted in Claimant's dismissal.

The Board does not review penalties de novo. Our role is limited to determining whether the penalty imposed was arbitrary, capricious or excessive. Considering all of the facts and circumstances revealed in the record, we are unable to say that the assessment of sixty demerits was arbitrary, capricious or excessive.

AWARD

Claim denied.

Martin H. Malin, Chairman

D. M. Gevaudan
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, May 8, 2000.