

BEFORE PUBLIC LAW BOARD NO. 6017

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

SOO LINE RAILROAD COMPANY

(Former Chicago, Milwaukee, St. Paul and Pacific Railroad Company)

Case No. 1

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of the Extra Gang Foreman A. M. Stroud for falsification of time on December 2 and 3, 1995 is arbitrary, capricious, on the basis of unproven charges (System File C-26-96-T620-01/8-00282).
2. As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated ' . . . to Carrier service retroactively effective to January 30, 1996 and continuing for all straight time, overtime, vacation and benefits lost to which he was entitled. . . . '

FINDING:

On February 2, 1996, the Claimant was notified to appear for a formal investigation to determine his responsibility, if any, in connection with his alleged November and December, 1995 timeroll discrepancies. It was established at the hearing that the Claimant's timeroll, which is filled out in triplicate, that was submitted to the payroll department claimed eight hours overtime for December 2 and 3, 1995. However, the copy that was given to the Claimant's supervisor did not indicate any overtime. Consequently, the Claimant was found guilty of falsifying his timeroll for December 2

and 3, 1995, and, as a result, he was terminated from the Claimant's service.

The Organization filed the instant claim on behalf of the Claimant contending that the Carrier failed to meet its burden of proof that the Claimant falsified his timesheet. The Organization contended that the Claimant should be reinstated to service with full backpay.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the extensive record in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of falsifying his time records for December 2 and December 3, 1995. The record is clear that the Claimant filed for overtime pay for December 2 and December 3, 1995, and did not work on those two dates. Consequently, he was appropriately found guilty of falsifying records in an effort to obtain pay from the Company for time that he did not work.

Once this Board has determined that there sufficient evidence in the record to support the guilty finding, 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 action to have been unreasonable, arbitrary, or capricious.

The Carrier is correct that very often theft is the type of offense that leads to discharge, even on the first offense. However, the record reveals that this Claimant has been employed by the Carrier for twenty-six (26) years and only has accumulated one

previous disciplinary action against him. In addition, the Organization has tendered to the Board Third Division Award Number 31537 which involved these same two parties and an employee who falsified time records for the second half of December of 1992. The Claimant in that case completed a timeroll claiming eight hours of straight time pay for December 28, 1992, even though he rendered no service on that date. This same Carrier found that Claimant guilty of falsification and issued a 60-day suspension to him for the similar offense. Hence, this Carrier has issued suspensions as discipline for this same type of offense in the past.

There is no question that the action taken by the Claimant in this case was more serious than the one in the case ruled upon by the Third Division of the National Railroad Adjustment Board. However, this Board finds that the discharge of this 26-year employee for a similar offense to the one in the Third Division case was unreasonable, arbitrary, and capricious. Therefore, we order that the Claimant be reinstated, but without backpay. The period that the Claimant was off shall be considered a lengthy suspension.

AWARD

Claim sustained in part. The Claimant is to be reinstated, but without backpay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member

M. P. KKR
CARRIER MEMBER

Dated: Aug 25 1991

H. B. [Signature]
ORGANIZATION MEMBER

Dated: June 19, 1998