

BEFORE PUBLIC LAW BOARD NO. 6043

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
ILLINOIS CENTRAL RAILROAD**

Case No. 29

STATEMENT OF CLAIM:

Appeal of the Carrier's dismissal of Claimant C.D. Mitchell, on charges that the Claimant allegedly violated Carrier Operating Bulletin No. 46, 35, and Operating General Rules I, J, H, and U, by allegedly reporting false time to payroll.

FINDINGS:

By letter dated August 13, 2005, the Claimant was notified to attend a formal hearing and investigation to determine "your responsibility, if any for allegedly reporting false time to payroll." After a postponement, the investigation was conducted on August 26, 2005. By letter dated September 22, 2005, the Claimant was notified that as a result of the investigation, he had been found guilty of violating Carrier Operating Bulletin No. 46, 35, and Operating General Rules I, J, H, and U, and that he was being dismissed from the Carrier's service. The Organization thereafter filed a claim on behalf of the Claimant, challenging the Carrier's decision to discharge him. The Carrier denied the claim.

The Carrier initially contends that the record contains detailed testimony regarding the Claimant's work habits. The Carrier insists that its witness provided competent eyewitness testimony regarding the events in question. The Carrier maintains that the evidence in the record constitutes substantial and compelling proof of the Claimant's willful misconduct.

The Carrier then disputes the Organization's contention that the charges were vague and imprecise. The Carrier asserts that there is nothing vague or imprecise about the stated purpose of the investigation in that the Notice specifically stated that the investigation was being held for the purpose of determining whether the Claimant reported false time to payroll. The Carrier argues that the testimony of the Claimant's co-workers, supervisors, and subordinates clearly substantiated the charges.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the quantum of evidence required to substantiate a charge such as the one at issue is considerably higher than what is required in other types of discipline cases. The Organization argues that because the charge of dishonesty reflects upon a person's character and standing in society, the Carrier must present evidence that is fully persuasive and truly substantial. The Organization asserts that although the Carrier is not bound by the requirements of proof necessary for conviction on a charge of theft or fraud, the Carrier must provide probative evidence supporting the charge of alleged dishonesty.

The Organization argues that the transcript does not support the Carrier's conclusions, and it contains no direct testimony from any eyewitness other than the Claimant. The Organization asserts that the transcript is merely a summary of the discussions of those present at the hearing, and it does not contain any positive evidence whatsoever in support of the Carrier's findings that the Claimant actually or willfully

violated the cited rules. The Organization emphasizes that a close study of the transcript leads only to the conclusion that substantial evidence is lacking in this case.

The Organization points out that innuendo and supposition are not substantial evidence of wrongdoing. The Organization asserts that not only were the charges vague and imprecise, at best, but the transcript contains absolutely no probative evidence to support the Carrier's findings.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural argument raised by the Organization and we find it to be without merit. The record reveals that the Notice of Investigation dated August 15, 2005, which revised the Notice of Investigation dated August 13, 2005, stated that the investigation was being held:

... for the purpose of determining your responsibility, if any, for allegedly reporting false time to payroll between July 11, 2005, and August 5, 2005. The Company's first knowledge of this matter was Thursday, August 11, 2005.

This Board finds that that Notice of Investigation was sufficient to comply with the rules.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier Operating Bulletin No. 46, 35, and Operating General Rules I,

J, H, and U, when he reported false time to payroll on several days during the applicable period.

Once this Board has determined that there is 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 actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was dismissed for a violation which is tantamount to theft from the Carrier. These kinds of violations often are dismissible offenses on the first occasion. Consequently, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 5-24-07



CARRIER MEMBER

DATED: May 24, 2007