

**BEFORE PUBLIC LAW BOARD NO. 6152**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**and**

**CHICAGO, CENTRAL AND PACIFIC RAILROAD**

**Case No. 1**

**STATEMENT OF CLAIM:**

1. The ten (10) day suspension assessed Trackman K. L. Norton for his alleged immoral and discourteous conduct by the use of vulgar and racial language towards co-employees was without just and sufficient cause and based on an unproven charge.
2. Trackman K. L. Norton now allowed a remedy prescribed in Rule 35(g).

**FINDINGS**

On August 25, 1995, Claimant was notified to appear for a formal investigation to ascertain his responsibility, if any, for his alleged immoral and discourteous conduct by the alleged use of vulgar and racial language directed toward co-employees, T. J. Jackson, R. M. Ketton, and A. W. Wilson but made to another person. The hearing was held on October 14, 1995, and the Claimant was found guilty of all charges. Consequently, he was suspended for ten days.

The Organization filed the instant claim on behalf of the Claimant challenging the suspension. The Organization contended that the Carrier failed to present sufficient evidence to support its charge.

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

This Board has reviewed the evidence and testimony in this case and we find that

the Carrier has not met its burden of proof that the Claimant engaged in immoral and discourteous conduct by the use of vulgar and racial language. Therefore, the claim must be sustained.

The record reveals that the only person who actually allegedly heard the conversation did not testify at the hearing. All of the witnesses were "hearsay" witnesses who stated that they did not hear the Claimant utter the vulgar and ignorant phrases but heard from another employee, one O. Visgar, that the Claimant had stated those remarks to him. The Claimant denies that any remarks of that kind were made.

Although hearsay testimony is allowed in these types of proceedings, it is fundamental that the Organization must have an opportunity to confront the accuser of the Claimant. That would afford the Organization representative an opportunity to cross-examine the person who was making the actual allegations against the Claimant. That did not occur here. The Organization was only given the opportunity to cross-examine individuals who stated that they were told by Mr. Visgar that the Claimant had made these remarks. *That is not sufficient.*

It is fundamental that in all discipline cases the Carrier bears the burden of proof. Although this offense is outrageous, and if it occurred, the Claimant should be disciplined, this Board can only find with this transcript and record that the Carrier did not present sufficient evidence to support its charges against the Claimant. Therefore, the claim must be sustained and the Claimant made whole.

**AWARD:**

Claim sustained. The ten-day suspension shall be removed from the Claimant's record and he shall be made whole.

  
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**PETER R. MEYERS**  
Neutral Member

  
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CARRIER MEMBER

  
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ORGANIZATION MEMBER

Dated: 7/12/99

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