

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6319**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
) Case No. 4
and)
) Award No. 4
BELT RAILWAY COMPANY OF CHICAGO)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
T. E. Coffey, Carrier Member

Hearing Date: February 13, 2003

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Inspector Jose L. Jimenez for his alleged misrepresentation of time submitted between February 11 and April 12, 2002 was without just and sufficient cause, in violation of the Agreement and excessive and undue punishment (System File BRC-6772D).
2. As a consequence of the violation referred to in Part (1) above, Track Inspector Jose L. Jimenez shall now be reinstated to service with all rights unimpaired, compensated for all wage loss suffered, and have his record cleared of this incident and be made whole for all losses suffered.

FINDINGS:

Public Law Board No. 6319, 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 April 16, 2002, Carrier notified Claimant that his employment was terminated, effective immediately. Pursuant to the Agreement, Claimant requested a formal hearing. By letter dated April 18, 2002, Carrier scheduled the hearing for April 22, 2002. The letter charged Claimant with violating Rules 1.6 and 1.15, "in that, during the period of February 11, 2002, through April 12, 2002, you allegedly misrepresented your time on numerous occasions." The hearing was postponed to and held on April 24, 2002. By letter dated April 29, 2002, Carrier reaffirmed Claimant's dismissal.

The Organization raises a number of due process objections to the investigation.

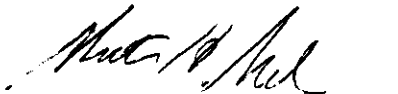
However, based on a careful review of the record, we find that Carrier afforded Claimant a fair hearing. One of the Organization's objections requires further comment. The Organization objected to the notice of charges as being too vague. The notice did not specify the dates on which Carrier alleged that Claimant misrepresented his time. Instead, it merely alleged that he had done so "on numerous occasions" over a two month period. Under other circumstances, we might find such an imprecise notice to be deficient, particularly since there does not appear to be any reason why Carrier could not have specified the dates. However, in the instant case, we find that Carrier's failure to specify the dates did not prejudice Claimant's ability to present a defense. Claimant did not deny misrepresenting his time. Indeed, in his closing statement, Claimant essentially admitted doing so and argued that other employees had behaved similarly and were not disciplined. (We note that beyond Claimant's assertion, the record contains no evidence of disparate treatment.)

The record establishes that Carrier proved the charge by substantial evidence. The primary evidence consisted of the testimony of Carrier's Chief of Police and the Police Report. However, every employee who was interviewed for the police report testified, corroborated their written statements and was subject to cross-examination by Claimant and the Organization. The evidence established, without any contradiction, that Claimant left early on numerous occasions during the period in question but represented to Carrier that he had worked a complete eight hour day.

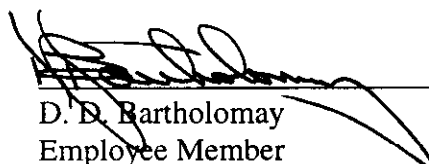
The Organization contends that the penalty of dismissal was excessive. We cannot agree. Carrier proved that Claimant regularly misrepresented his time, and thereby stole from Carrier, over an extended two month period of time. Theft is an inherently serious offense, but in this case the repetition and duration of the theft was a particularly aggravating factor. We recognize that Claimant had twenty-eight years of service and consider it extremely unfortunate when such a long term employee is dismissed. However, the record is devoid of any mitigating circumstances. Under the aggravated circumstances of this case, we cannot expect Carrier to run the risks of reinstating a thief, even when the thief is such a long term employee.

AWARD

Claim denied.


Martin H. Malin, Chairman


T. E. Coffey
Carrier Member


D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, May 23, 2003.