

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6319**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

and

**BELT RAILWAY COMPANY OF CHICAGO**

)

) Case No. 2

)

) Award No. 2

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

T. E. Coffey, Carrier Member

Hearing Date: July 21, 2000

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Laborer Bruce E. Rutkowski, Jr., for his alleged vandalism to vehicle BRC A-221 during the last quarter of 1998 was without just and sufficient cause, unsupported and capricious (System File BRC-6509D).
2. Track Laborer Bruce E. Rutkowski, Jr., shall now be \*\*\*\* reinstated with all rights unimpaired, be compensated all lost wages, have his record cleared and be made whole all losses in connection with his wrongful termination.'

**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 February 18, 1999, Carrier notified Claimant that his employment was terminated, effective immediately. Pursuant to the Agreement, Claimant requested a formal hearing. By letter dated February 22, 1999, Carrier scheduled the hearing for February 25, 1999. The letter charged Claimant with "your alleged vandalism to BRC vehicle A-221 during the last quarter of 1998." The hearing was postponed to and held on March 4, 1999. By letter dated March 9, 1999, Carrier reaffirmed Claimant's dismissal.

The Organization contends that Claimant's due process rights were violated in several respects and that Carrier failed to prove the charge. Most of the Organization's due process

arguments were also made in Case No. 1. We rejected these arguments in Award No. 1 and incorporate our reasoning by reference into this award. We shall address specifically those arguments made by the Organization that are unique to the instant case.

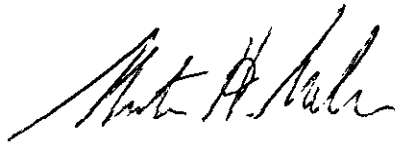
The Organization contends that the claim should be sustained because the notice charged Claimant with vandalizing the vehicle during the last quarter of 1998, whereas the evidence disclosed that the vehicle was taken out of service on or about September 25, 1998. We do not agree. The transcript reveals that when the Organization objected, the hearing officer recognized that there was an error in the charge and offered the Organization a recess if needed to prepare in light of the error. The Organization rejected the offer. It is apparent from the transcript that the Organization was not prejudiced by the error in the charge. Claimant admitted spray painting the vehicle both before and after it was taken out of service. The charge was sufficiently precise to enable Claimant and the Organization to prepare a defense.

On the merits, the Organization contends that Carrier failed to prove the charge. The record, however, reveals that Claimant admitted spray painting the truck. Although the Organization contends that Claimant merely painted rust spots white, Claimant also admitted painting the wheel hubs while the truck was in service and painting designs on the truck after it had been taken out of service. Claimant's admissions alone provide substantial evidence proving the charge.

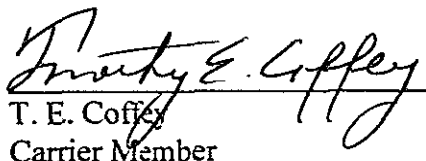
The Organization also contends that Carrier condoned Claimant's actions. However, there was no evidence that any Carrier official actually observed Claimant painting the truck, or was otherwise aware of Claimant's actions. The record simply does not support the Organization's argument.

#### AWARD

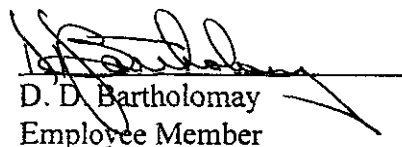
Claim denied.



Martin H. Malin, Chairman



T. E. Coffey  
Carrier Member



D. D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, December 20, 2000.