

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6402**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 17
)
) Award No. 8
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
C. M. Will, Carrier Member

Hearing Date: January 21, 2002

STATEMENT OF CLAIM:

1. The dismissal of Water Service Repairman S. H. Iniquez for his allegedly providing false timekeeping information for the period June 30 through July 14, 2000 was without just and sufficient cause and excessive (System File MW-00-140/1245319).
2. Water Service Repairman S. H. Iniquez shall now be reinstated to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 6402, 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 July 28, 2000, Carrier notified Claimant to report for an investigation on August 21, 2000, in connection with his allegedly providing false timekeeping information and indifference to duty by engaging in personal business during his normal tour of duty between June 30 and July 14, 2000. The hearing was held as scheduled. On September 1, 2000, Carrier informed Claimant that he had been found guilty of the charges and dismissed from service.

The record leaves absolutely no question that Carrier proved Claimant's guilt by substantial evidence. Testimony from Carrier's Special Agent and from a private investigator that Carrier retained, both of whom maintained surveillance on Claimant, established that on June 30, 2000, and July 6, 7, and 14, 2000, Claimant was working at a bakery that he owned for several hours each day during his normal tour of duty. The evidence further established that

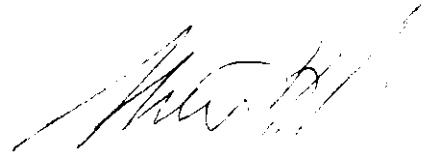
Claimant filed his own time reports and Claimant claimed time for the hours that he worked at the bakery, was paid for those hours as if he had been rendering service to Carrier and cashed the check he received as payment.


Although Claimant disputed the total number of hours that the testimony showed he worked at the bakery, he admitted working at the bakery when he was supposed to be working for Carrier and admitted claiming eight hours pay on those days. Furthermore, at the hearing, Claimant suggested that when his supervisor became aware that Claimant was working at the bakery, she should have counseled him not to report that time as time worked for Carrier. The supervisor replied that she did not expect Claimant to report that time as time worked or to cash a check received as payment for that time. Specifically, the supervisor stated, "- - not working the time that you were being paid for. I really didn't believe that was occurring," to which Claimant responded, "Then, you didn't know me very well." Claimant essentially admitted that he was a thief.¹


The Organization has made some creative arguments in an heroic effort to save the job of Claimant who had twenty-three years of service at the time of his dismissal. However, the Organization is powerless to change the basic facts. The record permits only one conclusion. Claimant was an unmitigated thief and no reasonable Board would compel Carrier to keep him in its employ. The penalty of dismissal was appropriate.

AWARD

Claim denied.



Martin H. Malin, Chairman

C. M. Will,
Carrier Member

D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, May 13, 2002.

¹Claimant's suggestion that his supervisor was obligated to counsel him not to steal is patently absurd.