

BEFORE PUBLIC LAW BOARD NO. 6568

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

BANGOR & AROOSTOOK RAILROAD COMPANY

Case No. 5

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of Section Foreman Joey Potvin for his alleged unauthorized absence on December 27, 2001 and falsification of the time sheet for that day was without just and sufficient cause and excessive and undue punishment.
2. Section Foreman Joey Potvin shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

BACKGROUND:

Claimant Joey Potvin entered the service of the Carrier on July 17, 1979 as a Trackman and was promoted to Section Foreman on May 10, 1994. On January 15, 2002, the Carrier notified Claimant to appear for a formal hearing to determine his responsibility, if any, in connection with falsifying his timesheet and claiming eight hours of pay for December 27, 2001 when, in fact, he did not work that day. The hearing was held on January 17, 2002. Thereafter, the Carrier notified Claimant that he was found to have violated Carrier's Rules H, 9010, and 9012. For these violations and his past record, Claimant was dismissed from service, by letter dated January 25, 2002.

THE RULES AT ISSUE:

Carrier's Rules H, 9010, and 9012 provide as follows, in relevant part:

Rule H

*No time or wages are to be entered on timeslips or payrolls
except for work actually performed by the person whose name
appears thereon.*

* * * *

Rule 9010

*Employees who are dishonest ...will not be retained in the
service.*

* * * *

Rule 9012

*Employees must report for duty at the prescribed place and time.
If subject to call, they must not absent themselves from their usual
calling place without giving notice to those required to call them.
Employees must not absent themselves from duty or engage a
substitute to perform their duties without permission of a supervisor.*

FINDINGS:

The facts giving rise to the Claimant's dismissal, for the most part, are undisputed. Claimant had obtained permission from Roadmaster L. Fournier to be absent from his duties at Fort Kent, Maine on December 21 and 26, 2001. On December 27, however, Claimant contacted Crewmember Robert Wishart and informed him that he would not be reporting for duty on that day. Undisputedly, Claimant had neither sought nor secured permission from his supervisor to absent himself from duty on December 27, 2001.

When Claimant returned to work on December 28, 2001, he learned from Crewmember B. Nadeau that his crew had worked in Houlton the preceding day.

Claimant then entered eight hours in the ledger as if he had worked with his crew in Houlton on December 27, and he submitted a timesheet for pay for that date.

During the formal investigation of this incident, Claimant testified that he intended to use future comp time to reimburse the Carrier for the eight hours he claimed on December 27. He further testified that, in fact, he worked overtime on December 28, 2001 and was applying the overcharge to December 27. However, Claimant was also charged with similar time card violations for January 10, 2002. During the formal investigation of those charges, Claimant testified that he planned to use the three and one-half hours of comp time that he earned on December 28, 2001 to cover the time he absented himself from duty on January 10, 2002.

Based upon these events, the Carrier contends that Claimant absented himself from work on December 27, 2001 without authorization even though he knew that he needed permission to be absent from his regular assigned position. He then compounded that violation of the rules by falsifying his timesheet and claiming pay for time he did not work. Although he attempted to exonerate himself by claiming that he intended to use comp time from hours worked on December 28 to cover his absence on the preceding day, he also tried to use those same overtime hours to cover an unauthorized absence on January 10, 2002. The Carrier emphasizes that this was Claimant's third attempt to collect pay through improper means. Therefore, there is no valid basis to mitigate the penalty.

The Organization challenges the dismissal as arbitrary, capricious, and excessive. It also asserts that the Carrier committed procedural violations by dismissing Claimant prior

to his hearing and by failing to provide a timely statement of the charges against him. An additional procedural violation occurred, argues the Organization, because Claimant was dismissed without benefit of a hearing before an officer superior in rank to the officer who preferred the charges.

As to the Carrier's contention that Claimant intentionally falsified his timesheet, the Organization submits that the Carrier has failed to support this accusation with clear and convincing evidence of dishonesty. Claimant had serious family problems that required his immediate attention, and he planned to make up the missed time. Therefore, in the Organization's view, the Carrier's decision to dismiss him was excessively harsh, especially in light of Claimant's lengthy service.

OPINION OF THE BOARD:

This Board has reviewed the procedural arguments raised by the Organization and finds them to be without merit. Article IV, Section 1 of the Agreement reads:

The hearing will be held within ten (10) calendar days of the date when charged with the offense or held out of service.
(Emphasis added.)

Given Claimant's past history with respect to the improper submission of time for pay purposes, the Carrier was within its rights in holding him out of service pending completion of its investigation. Claimant was held out of service on January 10, 2002, and thereafter was granted a hearing on January 17, 2002. This was consistent with the time requirements set forth in Article IV, Section 1. Claimant received written notice of the charges against him on January 15, 2002, prior to his hearing on January 17. That hearing was conducted before an officer superior in rank to the charging officer, and it

afforded Claimant a full and fair opportunity to defend himself against the Carrier's charges.

As to the merits of the claim, the Board, based upon a thorough review of the Record testimony and evidence, finds that Claimant did willfully absent himself from duty on December 27, 2001 without receiving permission. He knew such permission was required, even if genuine family problems necessitated his absence. He then dishonestly made claim for eight hours of pay for December 27 even though he never reported to work on that day. Claimant's story that he intended to cover the absence by working overtime on December 28 was unconvincing inasmuch as he tried to use the same overtime hours to cover an unauthorized absence on January 10, 2002.

There are no mitigating factors in this case. To the contrary, Claimant repeatedly has sought to collect monetary benefits through improper means. Claimant was suspended for 180 days and disqualified as a Section Foreman in December 1997 for falsifying overtime records. In an Award dated May 29, 2001, Public Law Board No. 6367 upheld the 180-day suspension but granted Claimant his Section Foreman's rights back to his original date. In less than seven months from the date of that Award, however, Claimant again falsified his time sheet to gain money to which he was not entitled. Clearly, he was not chastened by his prior discipline. Instead, he brazenly attempted to cheat his employer again.

For these reasons, the Board finds that Claimant did violate Carrier's Rules H, 9010, and 9012. He has demonstrated that he cannot be trusted to comply with these rules, which are legitimate —indeed necessary— for the Carrier's successful operation.

AWARD:

The dismissal of Section Foreman Joey Potvin for his unauthorized absence on December 27, 2001 and his falsification of the timesheet for that day was for just and sufficient cause. His dismissal is hereby upheld, and therefore the instant claim is denied.


JOAN PARKER, Neutral Member


CARRIER MEMBER

DATED: 2/27/03


ORGANIZATION MEMBER

DATED: 2-27-03