

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE)	
OF WAY EMPLOYES DIVISION)	
IBT RAIL CONFERENCE)	Docket No. 29
)	
and)	
)	
CANADIAN NATIONAL/WISCONSIN)	
CENTRAL LTD.)	Claimant: S. Kidd

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

1. The Carrier's decision to dismiss employee S. Kidd from service under letter dated August 29, 2011, for his alleged violation of U.S. Operating Rules - H and General Notice #01-11-ITEM 11, in connection with his alleged falsification of time roll/claiming payment for a work assignment that began at 1500 hours on July 2, 2011 at the Escanaba Ore Dock was on the basis of unproven charges, unjust, unwarranted and entirely arbitrary and can not stand (Carrier's File WC-BMWED-2011-00033).
2. As a consequence of the Carrier's violation referred to in Part 1 above, Claimant S. Kidd shall receive the remedy prescribed in Rule 31I of the Agreement."

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Carrier served Claimant with a Notice of Investigation that Claimant was:

notified to attend a formal investigation to be held as directed below; Friday, August 12th, 2011, 1000 16 hours, Sault Saint Marie Bridge Company, Escanaba Ore 17 Dock, Main Office Building Conference Room, 1700 North 18 14th Street, Wells, Michigan 49894.

This investigation is being held to develop the facts and to determine your responsibility, if any, and whether you violated any Company rules, regulations, policies and/or directives in connections with allegedly falsifying time/claiming pay for a work assignment that began at 1500 hours on July 2nd. 2011 at the Escanaba Ore Dock.

The Organization maintains that there are two procedural errors in the instant matter. First, the Carrier introduced documentary evidence at the hearing that was not tendered pursuant to Rule 31 A and second, the Carrier supervisor prepared three identical statements and required employees to sign them.

On the merits, the Organization states that Claimant is an 18 year employee with no payroll issues in the 7 years that the electronic payroll system has been used. According to the Organization, the Carrier alleges that Claimant committed an act of dishonesty, however, the evidence shows that Claimant committed a mistake when inputting his time.

The Carrier counters that Claimant admitted to improperly entering his time. That act was a violation of the Carrier Rules. Based upon Claimant's disciplinary record, Claimant was properly terminated.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there is substantial evidence in the record to support the discipline. The evidence shows that Claimant entered 8 hours into the system despite only working 5 hours on July 2, 2011. The system was not a new system and he was not new to entering data into the system. The Organization's claim that it was a mistaken entry is belied by the fact that the alleged mistake was not brought to the attention of the Carrier.

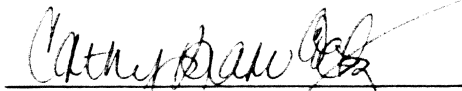
Given that the Carrier established the violation, the inquiry turns to the level of discipline that was imposed. There was no abuse of the Carrier's discretion in imposing the discipline of termination where the discipline was progressive and the misconduct was serious.

Award:

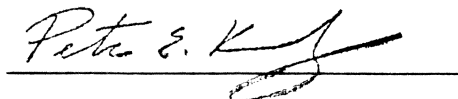
Claim denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Peter Kennedy, Organization Member

Signed on June 10, 2013