

PUBLIC LAW BOARD NO. 1844

AWARD NO. 57

CASE NO. 76

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Section Foreman K. M. O'Neill, effective January 16, 1978, was without just and sufficient cause and wholly disproportionate to the alleged offense (System File D-11-3-258).
- (2) Claimant O'Neill be reinstated with all rights unimpaired and compensated for all time lost because of the violation referred to within Part one (1) of this claim."

OPINION OF BOARD:

Claimant was employed as a Section Foreman working in and around Ames, Iowa. His assigned hours were 7:30 AM to 4:30 PM, with a one hour meal period from 12 Noon to 1:00 PM. His supervisor, Roadmaster Henry, was dissatisfied with the productivity of Claimant's gang and suspicious of frequent overtime claims. Accordingly, he arranged for surveillance of Claimant's crew on December 15, 1977. As a result of observations by Lieutenant Adams of Carrier's Police Department, Claimant was served with the following notice of hearing and investigation on December 28, 1977:

"CHARGE: Your responsibility for your failure to perform the duties of your assignment on December 15, 1977 in that:

1. During your assigned hours of 7:30 AM to 4:30 PM with meal period of 12 Noon to 1:00 PM on December 15, 1977 while supposedly on duty and under pay you

were in fact inside the Grove Cafe in Ames, Iowa, performing no service from 9:32 AM to 10:10 AM.

2. During your assigned hours of 7:30 AM to 4:30 PM with meal period of 12:00 Noon to 1:00 PM on December 15, 1977, while supposedly on duty and under pay you were in fact in the Ames Tool House performing no track work from 11:40 to 12 Noon and from 5:05 PM to 5:35 PM.

3. During your assigned work hours on December 15, 1977 while supposedly on duty and under pay you and the trackmen under your direction:

A. Threw snowballs at a passing private auto at approximately 1:01 PM in Ames, Iowa.

B. Engaged in a snowball throwing fight with two other employees at approximately 1:10 PM in Ames, Iowa.

4. On December 15, 1977 you falsified your Daily Work Report in that you claimed to have worked 2 hours on overtime when in fact you were on duty for only one hour overtime.

Following the hearing, Claimant was judged guilty by Carrier and terminated from service.

Claimant admitted the factual accuracy of virtually all of the charges but maintained that the appearance of impropriety was inaccurate. Thus he attempted to justify or explain away his apparent goldbricking and failure to supervise employees under his direction. He conceded being in the restaurant for a coffee break during working hours with two of his men; but maintained that he was actually conducting company business during that time by explaining to them the work he wanted done. He admitted being in the tool shed with the crew for twenty minutes prior to going on lunch break, but insisted that this was so one of the crew members could fill out an accident report form. There was no explanation as to what the other crew members were doing during that time. He admitted being in the tool shed

with the whole crew for one-half hour at the end of the day but maintains that they were all busy oiling and cleaning equipment or installing handles in mauls. There was no plausible explanation why this type of work was being performed on an overtime basis as the crew's regular day had ended at 4:30 PM. Claimant concedes that he falsified the overtime claim for December 15, 1977 by showing himself and the crew off duty at 6:30 PM when in fact they left at 5:35 PM. However, he insisted that this was in anticipation of an early report for duty the next morning and also because he had given his men some "homework" to study that night. Claimant admits throwing snowballs but maintains that part of the time he was doing so he was not on company property and also that the passing car he hit was that of a friend who would not mind.

Apparently Carrier did not find Claimant's excuses plausible or exculpatory. We can find no reason to do so either. The record amply supports Carrier's conclusion that Claimant is guilty as charged. At bottom line the record persuasively establishes that he claimed pay for nearly three hours of time when he was not performing work for Carrier. Nor, given the nature of the offenses and Claimant's prior discipline record, is there any basis for reducing the penalty.

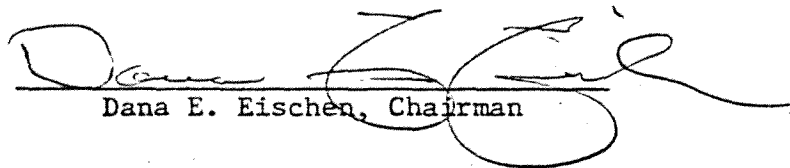
FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec. 5, 1979