

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 130

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Claim on behalf of D. J. Hedrick for reinstatement to service with payment for all time lost as a result of his dismissal following a formal investigation held on December 3, 1999, in connection with his failure to protect his assignment on October 7, 1999. (Carrier's File No. MW-FTW-99-90-BB-426.)
2. Claimant Hedrick shall now be reinstated with seniority, vacation, and all other rights unimpaired and he shall be compensated for all wage loss suffered beginning December 4, 1999, and continuing.

FINDINGS:

Claimant D. J. Hedrick was employed by the Carrier as a crane operator at the time of this claim.

On October 12, 1999, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with his failure to protect his assignment on October 6, 1999. The Carrier corrected the actual date of the alleged incident by issuing an amended letter indicating the date of the incident as October 7, 1999.

After several postponements, the hearing took place on December 3, 1999. On December 17, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from all service with the Carrier.

The Organization filed a claim on behalf of the Claimant, arguing that the hearing officer had prejudged the Claimant prior to convening the investigation because he participated in a mock investigation on December 2, 1999, without the Claimant's and/or the Organization's presence, and reviewed tainted testimony submitted by Carrier witnesses. The Organization maintains that the Carrier's witnesses were coached. Therefore, the Organization claims, the Claimant did not receive a fair and impartial investigation to which he was entitled by virtue of the parties' working agreement. The Organization further contends that immediately after the hearing, the Carrier withheld the Claimant from service, which is unusual because that is done pending an investigation, not after, thereby proving that the Carrier had prejudged the Claimant. The Organization argues that the Claimant was also caught up in an unusual set of circumstances on October 7, 1999, but clearly did not willingly and knowingly perform any misdeeds.

The Carrier denied the claim, contending that the testimony at the hearing revealed that the Claimant's immediate supervisor and foreman did not have knowledge of the Claimant's location on October 7, 1999, and that the Claimant did not contact anyone concerning his absence. The Carrier contends that the Claimant was supposed to go to Farnham, New York, to assist B&B forces on a bridge project, but failed to do so. The Carrier asserts that it properly notified the Claimant and afforded him a fair and impartial investigation as provided for in the schedule agreement. The Carrier also contends that the hearing officer was not barred from talking to witnesses prior to the hearing. The Carrier argues that the discipline assessed was wholly appropriate

considering the nature of the offense and the Claimant's past discipline record, which includes a previous dismissal. The Carrier further argues that although the Claimant insisted that he was at Farnham, the fact that he went home without permission because he claimed no one was at the site is against proper procedure and, therefore, the Claimant is guilty of failing to protect his assignment. The Carrier claims that the Claimant's failure to protect his assignment was a serious offense and had an adverse effect on other employees attempting to perform their work on the bridge project in a safe and efficient manner.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed all of the procedural arguments raised by the Organization, and we find them to be without merit.

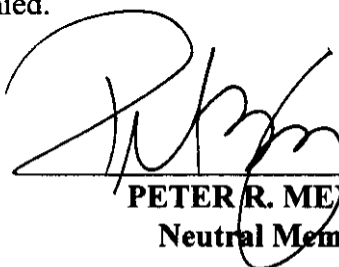
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to protect his assignment on October 7, 1999. There is no question that the Claimant was scheduled to work and that he did not show up that day. The Claimant admitted that he made no effort to contact anyone.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

Given the seriousness of the offense of which the Claimant was found guilty in this case plus the fact that the Claimant had a poor disciplinary record, having been previously dismissed only seven months prior to this incident, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated him for this latest offense. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 5/18/01



ORGANIZATION MEMBER

DATED: 5-18-01