

PUBLIC LAW BOARD NO. 1844

AWARD NO. 7

CASE NO. 19

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 Track Supervisor DePaepe was without just and sufficient cause and wholly disproportionate to the alleged offense (System File D-11-17-157).
2. Track Supervisor DePaepe be reinstated with all rights unimpaired and compensated for all time lost because of the violation referred within Part 1 of this claim.

OPINION OF BOARD:

This case involves the dismissal from service of Track Supervisor S. DePaepe following investigation into the facts regarding time reported by him on his second period December, 1975, Time Report. Following investigation on January 9, 1976, Claimant was advised that he had been dismissed from service effective January 19, 1976. The instant claim was initiated by the Organization on February 5, 1976, seeking reinstatement of Mr. DePaepe and compensation for all time lost. The claim was denied at several levels of handling on the property and comes to us for disposition.

Review of the record, especially the transcript of investigation, reveals that Claimant held the position of Track Supervisor, headquartered at Des Plaines, Illinois, pursuant to Bulletin No. 4 issued January 15, 1974. Under that bulletin the regular days of assignments are Tuesday to Saturday inclusive, with Sunday and

Monday rest days. The bulletin stipulates no specific daily hours of work but the record establishes beyond cavil that a normal work day for the position was eight hours, with a starting time of 7:00 a.m. and quitting time of 3:30 p.m., with thirty minutes off for lunch. In his position as Track Supervisor Claimant maintained his own work time records and reported his time to Payroll on a bi-monthly basis. The instant dispute centers around time claimed by Mr. DePaepe for pay purposes on December 18 and 19, 1975. The undisputed record shows that for December 18, 1975, Claimant submitted a work record showing seven hours' work at his straight time rate. For December 19, 1975, he reported and received pay for eight hours' work at his regular straight time rate. Carrier contends that on both days Claimant knowingly misreported his time and received pay for time not worked.

The record shows that on December 18, 1975, Claimant had trouble starting his car and his supervisor, Roadmaster R. Verley, sent an Assistant Foreman to pick Claimant up at his home. They returned and Claimant accordingly reported for work on this date at 8:45 a.m. Claimant went off duty at 3:30 p.m. on December 18, 1975. Thus, not counting his 30-minute lunch break, Claimant performed 6-1/4 hours of work for which he claimed seven hours' pay. On December 19, 1975, Claimant again experienced car trouble but finally managed to report for work at 7:40 a.m. He quit that day at approximately 3:30 p.m. Accordingly, not counting his 30-minute lunch time, Claimant on December 19, 1975, performed 7 hours and 20 minutes of service for which he claimed eight hours' pay. Having established the foregoing facts, it appears that Carrier has made a prima facie case that Claimant misreported his time on the days in question. The only issues properly joined on the property and argued before us are the Organization's contentions that: (1) Claimant "must have" worked through his lunch hour on each of the days in question and accordingly his time reports for each day vary only in the amount of ten minutes. From this premise the Organization argues

that the ultimate penalty of dismissal is unreasonable and not warranted for such a minor infraction; and (2) arguendo, the Organization urges that even if Claimant misreported his time to the extent of 40 minutes each day, he was justified in doing so to "make up" overtime he had worked but not claimed on other occasions. In this latter connection the Organization insists that the record shows Claimant's supervisor expressly directed him to make up overtime in this fashion.

We have combed the record with extreme care and we find no factual underpinning for the Organization's assertions. Whether Claimant worked through his lunch hour on the dates in question is purely a matter for speculation and is nowhere indicated on the record. Nor do we read the record, and especially the transcript of investigation, as establishing that Claimant's supervisor, Roadmaster Verley, authorized him to over-report his straight time hours in order to absorb otherwise unreported overtime. Moreover, the payroll report for the second period of December, 1975, belies his contention in that it shows substantial overtime reported by Claimant. In all the facts and circumstances, we find that Carrier's conclusion that Claimant knowingly misreported his hours worked on December 18 and 19, 1975, is founded in substantial record evidence. We find no basis herein upon which to disturb Carrier's assessment of discipline. Accordingly, the claim must be denied.

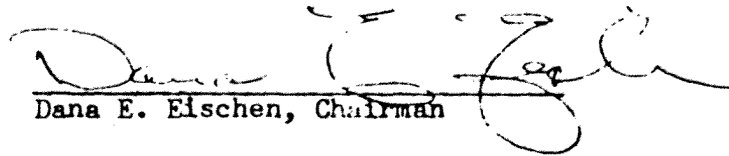
FINDINGS:

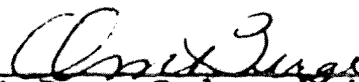
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

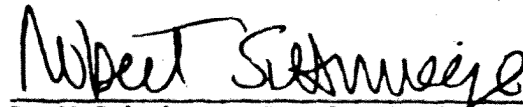
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

The claim is denied.


Dana E. Elschen, Chairman


O. M. Berge, Employee Member


R. W. Schmiede, Carrier Member

Dated: May 5, 1977