

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 4
CASE NO. 4

PARTIES)
 TO)
DISPUTE)
) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
 VS.
) JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
 PACIFIC RAILROAD COMPANY AND FORT WORTH AND DENVER
 RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement with the Brotherhood of Maintenance of Way Employees when on January 26, 1979 they dismissed Section Foreman M. J. Aberl without just and sufficient cause, said dismissal being arbitrary and in abuse of discretion and wholly disproportionate to the offense with which charged.
2. That Claimant M. J. Aberl be reinstated to the service of the Carrier with seniority, vacation and all other rights unimpaired and that he be compensated for all wage loss suffered account the Carrier's improper action.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

On February 2, 1979, Claimant was "Dismissed from service for violation of Rules 700(A) and 700(B) of the Rules of the Maintenance of Way Department, Form 15125, in connection with

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his failure to give an accurate report of time consumed while working as Section Foreman, Rosslyn, Texas, on January 4, 5, 10, and 15, 1979 on Payroll Form 30307, Time Roll Number 073-225 Rosslyn-No. 1 J.T.D. Section, for the first half of January 1979, as disclosed in investigation accorded him at Teague, Texas on January 26, 1979."

Rules 700(A) and (B) read:

"Employees who withhold information, or fail to give factual report of any irregularity, accident or violation of rules, will not be retained in the service.

Theft or pilferage shall be considered sufficient cause for dismissal from railroad service."

The testimony of Claimant clearly shows his failure to give an accurate report of time consumed while working as Section Foreman, Rosslyn, Texas, on January 4 and 15, 1979, and recognizes that there may be discrepancy in time reported on January 10, while denying inaccurate time elements on January 5:

"The prior payroll, period ending 12/31/78, shows the practice has been in the past and I submit a copy of the payroll and state that one day in this pay period I had taken off and I worked New Years Eve to make this day up. Payroll records do not show that I worked New Years Eve although it is common knowledge of (Roadmaster) and (Track Supervisor) that this was done. On my paycheck for that period there was a deduction of 16 hours that I had worked or that I was entitled to be paid for. The day of the 4th of January, I advanced the 8 hours that was due me on past payroll to pick up on the 4th, the day that I was absent. The date of the 15th of January, it was a pre-guessed payroll and I have not been back to work since the day of the 15th and I have not issued a correction on it due to the fact that I was not here. The date of the 5th of January, I made a previous statement and will re-issue time slips with correction - instead of 4 hours overtime as per Union agreement. Submission will show 7 hours overtime for all 4 men on the same section, and the

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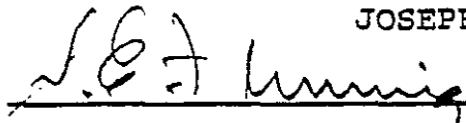
date of January 10th, we seem to have a disagreement in time. The time that I dropped the man off in Tomball at 8:45 and the time I gassed my truck, returned home and phoned (Track Supervisor). Discrepancy in time could be on either party and I leave that for you to decide. That's it." (Transcript, p. 9).

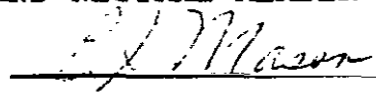
Although Claimant's report of time consumed is not correct, the evidence of record independently supports Claimant's explanations accounting for the inaccuracies (Employee Exhibits Pertaining to Overtime Worked) of January 4 and 15. Accordingly, the Board determines that Claimant, as to January 4 and 15, was not in violation of Rule 700(B) as it relates to theft. The evidence of record, in the opinion of the Board, is insufficient as to January 5 and 10. In sum, while Claimant was at fault in failing to submit accurate report of time consumed, the evidence of record does not support any determination that Claimant committed theft.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The Carrier shall reinstate Claimant M. J. Aberl to service with seniority, vacation and all other rights unimpaired, but Mr. Aberl is not to be paid for any time lost as a result of his discharge.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: Dec. 16, 1981