

PUBLIC LAW BOARD NO. 2960

AWARD NO. 1

CASE NO. 1

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackwalker Ed Grudle for allegedly falsifying his daily work report for November 2, 1979 was without just and sufficient cause and excessive discipline. (Carrier's File D-11-3-300)

(2) Trackwalker Ed Grudle shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

At the time of dismissal the Claimant was employed as a Trackwalker and had approximately six years of service.

On November 8, 1979 Mr. Grudle was directed to attend an investigation on the following charge.

"Your responsibility in connection with falsifying your daily work report on November 2, 1979 in that you claim you performed service from 7:30 AM to 12 Noon and 12:30 PM to 4:00 PM when you in fact performed no service from:

- A. 8:44 AM to 12:00 Noon
- B. 12:30 PM to 2:26 PM
- C. 3:45 PM to 4:00 PM"

The hearing was held November 27, 1979 and as a result the Carrier dismissed the Claimant.

There is no doubt, based on the record, that the Claimant was guilty as charged. Mr. Grudle's assigned hours were from 7:30 to 12:00 and 12:30 to 4:00. A Special Agent of the Railroad observed the Claimant sitting in the section shanty at about 8:05 a.m. where he remained until approximately 8:46 a.m. except for a brief trip to the yard office. At 8:46 a.m. the Agent observed that Mr. Grudle left the ^h~~shanty~~ and drove to his residence, arriving there at 9:06 a.m. The Agent testified Mr. Grudle did not leave his house until 2:26 p.m. except for a brief walk to the corner grocery store. At 2:26 p.m. Claimant left his house and observation was lost in traffic. The Agent checked a variety of places on the Carrier's property and the Claimant was not there. At 3:45 p.m. the Claimant's truck was located again in front of his house. Additional evidence was in the form of Mr. Grudle's work report for that day which was made out for eight hours pay indicating he walked the standard iron track between 7:30 a.m. and 12:00 p.m. and 12:30 p.m. to 2:00 p.m. and that he filled out F. R. A. reports between 2:00 p.m. and 4:00 p.m. The Board also notes the Claimant's clear admission that he falsified his work report and did not perform any of the services listed on his report.

The remaining question is whether dismissal is an appropriate penalty for this offense. The Organization argues that dismissal for this offense is excessive and they direct our attention to numerous cases supportive of the idea of progressive discipline which among other principles stands for the idea that dismissal should be preceded by a series of warnings and suspensions short of discharge in an attempt to rehabilitate an employee. This Neutral endorses the principles of progressive discipline. However, it is also a tenet of the progressive discipline philosophy that certain serious offenses do not require prior warning. As stated in Second Division Award 7588:

"Of course, there are some cases in which imposition of a very severe penalty at the outset is warranted by the circumstances, usually because of the egregious nature of the misconduct."


In our opinion, the particular offense committed by the Claimant in this case is of the category for which, save other extenuating circumstances, discharge is appropriate as first-time penalty. The offense committed by the Claimant was fundamentally and essentially theft by fraud. The Claimant through deception intended to take from the Carrier wages for which the Carrier received no value in the form of labor. Further, the blatant nature of this deception and the substantial amount of time involved makes the offense even more egregious. Many employees on the railroad are placed in a position of keeping their own time for the Carrier. The Carrier must be able to trust those employees and where the employee has so blatantly violated that trust as did the Claimant discharge by the Carrier cannot be considered arbitrary or capricious.


AWARD

Claim denied.



Gil Vernon, Chairman


H. G. Harper, Employee Member


J. S. Crawford, Carrier Member

Date: Oct 26, 1981