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PUBLIC LAW BOARD NO. 4104

Case No. 12

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Inspector, R.L. Stauffer for alleged 'violation of Rule 500A of the Maintenance of Way Department Rules and Rule 564 of the Burlington Northern Safety Rules' was without just and sufficient cause and on the basis of unproven charges. (System File 3 Gr MWA 84-2-9)
2. Claimant Stauffer shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: By letter dated October 15, 1983, Claimant was ordered to appear for an investigation regarding his alleged falsifying of his time roll on Sunday, October 9 and Tuesday October 11, 1983.

The hearing was held October 21, 1983. By letter dated November 10, 1983, Claimant was dismissed from service.

The Organization timely appealed Carrier's decision. Carrier rejected the appeal. Thereafter, the Organization advanced the claim to this Board for adjudication.

The Organization contends that Claimant did work eight hours on each day in dispute. According to Claimant, his motor car was not running properly and that he used his personal automobile to inspect track within his territory. Under these circumstances, the Organization stresses, Claimant did perform full service on the days in question. Therefore, it asks that the claim be sustained in its entirety.

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Carrier maintains that Carrier's agents observed Claimant far from his work site for substantial periods of time on October 9 and 11, 1983. Yet, it notes, his time rolls reveal eight hours of work. Thus, it submits, the rolls were falsified. Given this factor, Carrier asserts that Claimant's discharge was justified.

A review of the record convinces this Board that Claimant's discharge must be upheld. Carrier's witnesses testified that Claimant was at his work site for approximately one hour and twenty minutes on October 9, 1983. Thus, Claimant clearly did not perform work at the proper site on that day, despite recording that he worked the full eight hours.

Moreover, Claimant testified that he used his personal auto to inspect track. However, his report states that he used Carrier's motor car. Clearly, this inconsistency must weigh heavily against Claimant.

Stated simply, the, the record evidence reveals that Claimant utilized his personal auto during substantial portions of the work day for activities unrelated to his position. Despite this, he recorded that he worked a full eight hours on each day.

Carrier has a right to expect honesty from his employees. Claimant did not exhibit honesty. In fact, he is guilty of theft of time on the days in question. Thus, despite long seniority Claimant's discharge must be upheld. Accordingly, and for the foregoing reasons, the claim must be rejected.

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FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, find and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and


That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin E. Scheinman, Neutral Member

Feb. 7, 1989