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PUBLIC LAW BOARD NO. 4104

Case No. 23

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of Work Equipment Operator T.C. Loy for alleged violation of 'Rules 580 and 564 of the Burlington Northern Safety Rules for your misuse of company local purchase order envelopes' was arbitrary, without just and sufficient cause and in violation of the Agreement. (System File Work Equip. Gr MWA 83-7-12C)

2. The Claimant shall be reinstated to service with seniority unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At the time this dispute arose, Claimant, T.C. Loy, held a position as Work Equipment Operator at Sheridan, Illinois. As the result of a Company investigation, Claimant was found guilty of misuse of Company purchase orders and dismissed.

The Organization appealed Carrier's dismissal of the Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that Carrier failed to provide Claimant with written notice of the scheduled investigation, a violation of Rule 40(c). That rule states that at least 5 days advance written notice of the investigation shall be given the employe and the appropriate representative. It alleges that although Carrier contends that an investigation notice postmarked January 14, 1983 instructing Claimant to attend an investigation on January 24, 1983 was sent certified mail-

return receipt requested, no evidence was submitted by Carrier to support its position.

As second procedural objection raised by the Organization concerns Rule 40(A) of the Agreement. That rule provides for an investigation to be held not later than fifteen (15) days from the date of the occurrence. It points out that Special Agent R. Just received information concerning possible misconduct by the Claimant on December 29, 1982. On January 4 and 7, 1983 Claimant was interviewed by Special Agent Just and Director of Police and Special Services Greenberg. On January 7, 1983 Assistant Roadmaster Padberg received knowledge of Claimant's alleged misconduct in a conversation with Special Agent Just. As Assistant Roadmaster Padberg is considered a Carrier official as required in Rule 40(A), it contends that Carrier was obligated to conduct an investigation within fifteen (15) days of January 7, 1983. A hearing was not held until January 24, 1983, seventeen (17) days later. Thus, the Organization argues that Carrier violated Rule 40(A) when it held the investigation more than fifteen (15) days after Carrier knowledge.

On the merits, the Organization contends that Carrier's imposition of discipline was improper. It asserts that Claimant did not intend to be dishonest or deceitful in his actions on October 26, 1982 when he purchased tools and floodlights, for

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company use, and had such items listed on the purchase invoice as being hydraulic hoses. It further argues that although Claimant did not receive specific instructions to purchase the floodlights he believed that he was acquiring them for a proper reason and did not need permission to do so. In the Organizations view, dismissal was arbitrary and without sufficient cause under the peculiar circumstances of this case. Accordingly, the Organization asks that the claim be sustained on its merits as well as for procedural reasons.

Carrier, on the other hand, insists that it did not violate the Agreement here. First, it maintains that he was timely notified of the date of the investigation. Second, Carrier contends that when the appropriate Carrier official acquired knowledge of Claimants misconduct, the appropriate time limits of Rule 40(a) were followed.

As to the merits of the claim, Carrier points out that at no time did Claimant receive instructions to purchase floodlights or a grill for a pick up truck. Nor was he ever instructed to cover up any such purchases by changing the invoice. Under these circumstances, Carrier argues that the actions of Claimant were of his own and he must assume responsibility for such a serious violation. Moreover, Carrier points out that Claimant had been previously dismissed on March 28, 1980 for falsification of time cards and expense accounts. Claimant

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was reinstated on December 16, 1980 as a matter of managerial leniency. In light of this record and Claimant's repeated behavior of dishonesty, Carrier insists that dismissal is appropriate. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

After reviewing the record evidence, we are convinced that the procedural arguments must fail. This is so for a number of reasons. First, the record evidence reveals that sending the notice ten days prior to the scheduled hearing by certified letter fulfilled the Carrier's obligations under the Agreement. The Board also notes that at the hearing both Claimant and his representative stated that they were ready to proceed with the investigation and did not require a postponement. Thus, it is obvious that the Organization was sufficiently able to proceed with the hearing. Therefore, by mailing the notice on January 14, 1983, Carrier clearly complied with Rule 40(c).

Second, we do not believe that Rule 40(a) regarding time limits in the handling of the investigation was violated. Although the Organization contends that Carrier's first knowledge of the incident was on December 29, 1982 when Special Agent Just was informed of possible irregularities, we disagree. There exists specific language in Rule 40(a) of the Agreement excluding the Security Department from the fifteen day time limit. Since Just is a member of the Security Department, it was not until January 10, 1983 when Carrier officials Wood and Brawner were notified that time limits began. Hence, the hearing was appropriately scheduled

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on January 24, 1983 within the fifteen day time limit provision.

As to the merits of the claim, the record evidence is clear that Claimant purchased items that he did not receive authorization for, and subsequently, covered up such purchases. This is supported by Claimant's own testimony. The argument raised by the Organization that the purchases were not for personal use must be disregarded as having no bearing on this case. The testimony contained within the transcript clearly proves guilt of the charge concerning "alleged misuse of company purchase orders." The seriousness of such misconduct cannot be viewed lightly.

Finally, we are convinced that dismissal is an appropriate penalty. His prior record included a dismissal with reinstatement due to managerial leniency for serious misconduct only two years prior to this case.

Carrier has conclusively established Claimant's guilt of the charges. Accordingly, and for the foregoing reasons, the claim must fail.

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

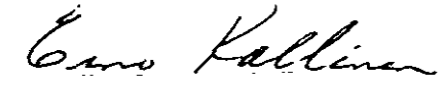
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

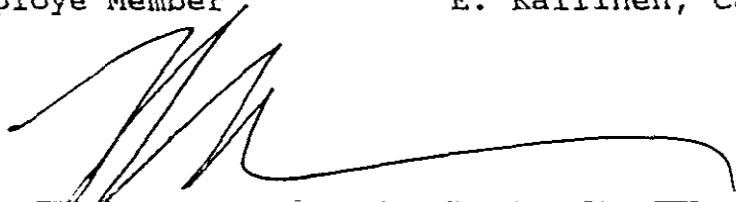
That the Agreement was not violated.

AWARD:

Claim denied.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

July 31, 1990