

**BEFORE PUBLIC LAW BOARD 5600**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

Case No. 3

**STATEMENT OF CLAIM:** Claim of the Brotherhood that:

1. The twenty demerits assessed J. Romero for his alleged failure to properly install a fuel filter on Truck 407 on October 1, 1993 was without just and sufficient cause and based on an unproven charge (System File SAC-1-94/UM-1-94).
2. The twenty-five demerits assessed J. Romero for his alleged failure to comply with instructions concerning locking of doors at the Joliet Truck Garage on October 6, 9, and 14, 1993 was without just and sufficient cause and based on an unproven charge (System File SAC-2-94/UM-9-94).
3. The thirty demerits\* assessed J. Romero for his alleged failure to properly replace the radiator cap on Truck 429 on October 18, 1993 was without just and sufficient cause and based on an unproven charge (System File SAC-3-94/UM-3-94).
4. The sixty demerits\* assessed J. Romero for his allegedly being unproductive and falsifying his timeroll on October 22, 1993 was without just and sufficient cause and based on an unproven charge (System File SAC-4-94/UM-4-94).
5. Because the Carrier's failure to meet its burden of proving the charge in each of the above four parts, and/or because the Carrier chose to issue discipline for such minor offenses, Mr. J. Romero shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

\* The thirty and sixty demerits each placed the total number

of demerits on the claimant's record over 100 and therefore the carrier also assessed the discipline of dismissal.

**FINDINGS:**

Claimant J. Romero was employed by the Carrier as a garage serviceman with seniority dating from 1976.

In Case 1, the Claimant was found guilty of negligence when he allegedly improperly installed a fuel filter on Truck 407 on October 1, 1993. The truck was being used by Carrier employees on October 4, 1993, when it stopped running. Upon inspection, it was determined that the fuel filter had been improperly installed. The Claimant was assessed 20 demerits.

In Case 2, the Carrier had found the Claimant guilty of failing to lock various doors at the Joliet Truck Garage on the dates of October 6, 9, and 14, 1993. Claimant was assessed 25 demerits.

In Case 3, the Claimant was found guilty of improperly replacing a radiator cap after he finished checking the fuel and fluids on Truck 429 on October 18, 1993. Claimant was assessed 30 demerits, and since this discipline brought his demerit accumulation in excess of 100 demerits, Claimant was dismissed from service effective November 16, 1993.

In Case 4, Claimant was assessed 60 demerits after he was observed allegedly being unproductive on October 22, 1993 between 2:15 p.m. and 3:00 p.m. Claimant's

time record, however, indicated that he was repairing flat tires and mounting new ones. Since these 60 demerits brought Claimant's total demerits in excess of 100, he was dismissed effective November 16, 1993.

The parties being unable to resolve the issues at hand, this matter now comes before this Board.

This Board has reviewed the procedural argument raised by the Organization and we find it to be without merit.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant on four separate occasions either failed to properly perform his work and was unproductive or falsified his timeroll in violation of Carrier rules. The record reveals that the Carrier properly found the Claimant guilty of all four violations and we find that the Carrier had a sufficient basis to issue a total of 135 demerits to the Claimant.

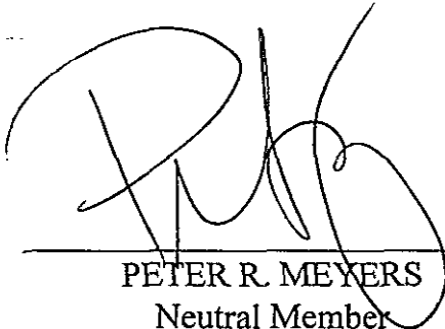
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The four incidents proven in this case coupled with the Claimant's past record demonstrates a pattern of disregard for Carrier's rules and the safety of the other workers. The record reveals that the Claimant received written instructions and verbal counseling

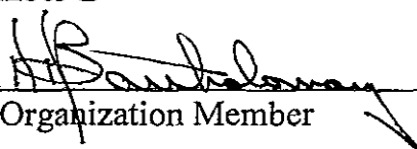
and was given notice of the early demerits and yet failed to improve his behavior. This Board cannot find that the Carrier did not have a sufficient basis upon which to terminate the Claimant. Therefore, the claim must be denied.

**AWARD**

Claim denied.

  
PETER R. MEYERS  
Neutral Member

  
Carrier Member

  
Organization Member

DATED: 8/28/95

DATED: 9-5-95