

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
) Case No. 27
and)
) Award No. 23
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
~~D. M. Goodson~~, Carrier Member

Hearing Date: June 25, 2002

STATEMENT OF CLAIM:

1. The discipline [twenty(20) demerits which led to dismissal] assessed Gary Indiana Trackman A. K. Goodson for his alleged violation of Maintenance of Way Safety Rules 1.2, 1.15, 1.28 and 1.40 in that he failed to report July 14 and 25, 2000 traffic violations on his Annual Driver's Certification of Violations dated February 23, 2001 was without just and sufficient cause, in violation of the Agreement and excessive punishment (System File GC-30-01/UM-39-01).
2. As a consequence of the violation referred to in Part (1) above, Gary Indiana Trackman A. K. Goodson shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On December 6, 2001, Carrier notified Claimant to report for an investigation on December 14, 2001. The investigation concerned Claimant's alleged violations of Safety Rules 1.2, 1.15, 1.28 and 1.40 in connection with his alleged failure to report two traffic violations on his annual certification of traffic violations. The hearing was held as scheduled. On December 17, 2001, Carrier advised Claimant that he had been found guilty of the charge and assessed

twenty demerits, which brought his demerit total to 115 and, under Carrier's policy, resulted in his dismissal from service.

The Organization contends that the charge was not brought in a timely manner. Rule 57(a) provides:

An employee in the service sixty (60) calendar days or more will not be disciplined or dismissed without first being given a fair and impartial hearing before an officer other than the officer preferring charges. No charge shall be made more than thirty (30) days after the date of an offense or the date a carrier officer has knowledge of the offense.

The evidence established that Claimant submitted his annual certification of violations on February 23, 2001. On November 1, 2001, as it does every year at that time, Carrier requested a license check for its employees holding commercial driver's licenses. The State of Illinois responded on November 14, 2001. The response was received by Carrier's Compliance Officer on November 29, 2001. On December 4, 2001, the Engineer Track & Structures was notified of Claimant's driving record. Notice of charges was issued on December 6, 2001. It is clear that notice of charges was issued within thirty days of the date a Carrier officer first had knowledge of the offense. Notice was timely in accordance with Rule 57(a).¹

The evidence is clear that, although Claimant had three traffic convictions during the year prior to his completion of the disclosure form, he only reported one of them. Claimant testified that he did not report the other two because, when he went to court on the third traffic citation, the judge told him that the first two would be removed from his record. Carrier did not credit Claimant's testimony and, as an appellate body, we generally defer to credibility determinations made on the property. We see no reason to deny such deference in the instant case. Indeed, although in some circumstances a judge may sentence a traffic offender to supervision resulting in the citation presently before the court being dismissed upon compliance with conditions of the supervision, we think it highly unlikely that the traffic court judge would have told Claimant that his two prior traffic convictions would be removed from his record. Claimant offered no evidence to corroborate the unusual scenario to which he testified.

Claimant was assessed a penalty of twenty demerits. The Organization observes that other employees were offered the opportunity to waive hearing and receive a penalty of ten demerits. We need not determine whether Carrier violated the Agreement by not offering Claimant a similar opportunity. Even if Claimant had received only ten demerits, his total would have exceeded 100 and he would have been dismissed.

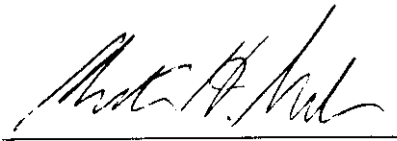
Carrier's demerits policy incorporates concepts of progressive discipline. It is designed

¹In its submission, the Organization has argued that the convictions occurred on August 21, 2000, August 10, 2000, and September 29, 2000, and that Carrier should have learned of them when it checked Claimant's driving record in November 2000. However, this argument was not raised in the claim or in the appeal to Carrier's highest designated officer during handling on the property. Therefore, we are unable to consider it.

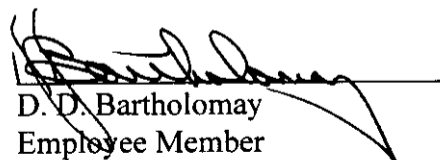
to ensure that employees who violate the rules have a reasonable opportunity to correct their behavior. Claimant's record demonstrates that he has failed to correct his behavior despite several opportunities to do so. Under the circumstances, we see no reason to disturb the discipline that was imposed.

AWARD

Claim denied.



Martin H. Malin, Chairman

~~A. L. Reichle~~ J. F. Ingham
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, October 30, 2002.