

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 9

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

1. The Carrier’s decision to assess a thirty (30) day suspension without pay; seven (7) day suspension for time deferred, and a one (1) year probationary period upon Claimant N. Laney for alleged violation of WATCO Team Member Handbook; Team members Conduct & Discipline, Dishonesty and Falsifying or misrepresenting Company or employment records, as well as WATCO Vehicle Inspection Policy; Section III DOT Vehicle Preventive Maintenance Plan Repair Procedures and Schedules, Paragraph 1, bullet point 4-Observe was arbitrary, excessive and unwarranted (System File 220-SK13D2-131).
2. As a consequence of the violation referred to in Part 1 above, Claimant Laney shall be afforded the full remedy prescribed in Rule 15D of the Agreement.”

FINDINGS:

By notice dated March 21, 2013, the Claimant was directed to attend a formal investigation on charges that from March 1 to June 30, 2012, the Claimant allegedly had been dishonest in reporting defects to his assigned truck in accordance with WATCO Vehicle Inspection Policy and the Employee Handbook. The investigation was conducted, as scheduled, on March 28, 2013. By letter dated April 11, 2013, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being assessed a thirty-day suspension, a seven-day suspension for time deferred, and a one-year probationary period. The Organization subsequently filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline

him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial credible evidence supports the finding that the Claimant is guilty as charged, because the Claimant was afforded all required elements of due process, and because the discipline imposed was not arbitrary, capricious, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier denied the Claimant his contractual due process rights by failing to provide him with a fair and impartial investigation, and because the Carrier failed to meet its burden of proof.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The Claimant was afforded all of his due process rights throughout the proceeding.

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 was guilty of violating the Carrier's safety rules prohibiting falsifying and misrepresenting Carrier employment records and he was guilty of dishonesty when he was aware of defects in the running lights of his vehicle and operated that vehicle with the defects and failed to report them on the Vehicle Inspection Reports. The evidence is clear that the lights were not working on the Claimant's vehicle, including on the morning of March 20, 2013. The Claimant testified that the lights were functioning, but the evidence shows


not true. The Claimant therefore was dishonest and acted in violation of the Carrier's rules.

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 actions to have been unreasonable, arbitrary, or capricious.

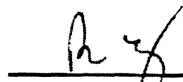
Falsification and dishonesty in completing Vehicle Inspection Reports is a Level S violation. The Carrier issued the Claimant a thirty-day suspension for that first serious offense. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued that discipline to the Claimant. Therefore, the claim must be denied.

AWARD:


The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 11-4-14



CARRIER MEMBER
DATED: 11-6-14