

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6302

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)
) Case No. 41
)
) Award No. 39
)

Martin H. Malin, Chairman & Neutral Member
D. D. Bartholomay, Employee Member
D. A. Ring, Carrier Member

Hearing Date: April 1, 2003

STATEMENT OF CLAIM:

1. The discipline (Level 2) assessed Flagging Foreman R. A. Nila for his alleged payment to an employee for hours not worked on September 8, 2000, was without just and sufficient cause and based on an unproven charge (System File W-0148-151/1263226-D).
2. The discipline (Level 5) assessed Flagging Foreman R. A. Nila for his allegedly paying himself and two (2) other employees for overtime hours not actually worked on September 14, 2000, was without just and sufficient cause, based on unproven charges and excessive discipline (System File W-0148-151/1263227-D).
3. As a consequence of the violations referred to in Parts (1) and (2) above, Flagging Foreman R. A. Nila shall be allowed the remedy prescribed in Rule 48(h).

FINDINGS:

Public Law Board No. 6302, 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 October 2, 2000, Claimant was notified to report for two investigations on October 19, 2000. The notices charged Claimant with dishonesty in paying an employee for hours not worked on September 8, 2000, and paying himself and two employees for overtime hours not worked on September 14, 2000. The hearings were postponed to and held on November 6, 2000. On November 24, 2000, Carrier notified Claimant that he had been found guilty of the charges and assessed an UPGRADE Level 2 in connection with the September 8, 2000, incident

dismissed from service in connection with the September 14, 2000, incident.

The Organization contends that Carrier failed to prove the charges by substantial evidence. We shall consider the charges in connection with the September 14, 2000, incident first. The record reflects that Claimant, who was responsible for reporting his and the other employees' time, and two other employees worked from 5:30 a.m. until 5:30 p.m. However, Claimant reported that he and the other two employees each worked fifteen hours that day. At the hearing, Claimant admitted that the time reports were inaccurate but testified that to the extent the reports were in error, they were honest mistakes. The Organization contends that Carrier failed to prove Claimant's dishonest intent.

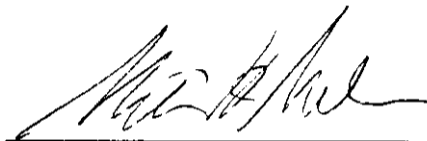
The question of Claimant's intent turns on the credibility of Claimant's testimony that his inaccurate reporting of the time was an honest mistake. Claimant's initial explanation was that the extra time was to compensate him and the other two employees for missed meal breaks. However, that explanation was shown not to account for all of the excessive time reported. Claimant then maintained that he made an honest mistake in his reporting. Carrier judged Claimant's testimony as not credible. As a reviewing body, we are in a relatively poor position to evaluate witness credibility, as he have not had the opportunity to observe the testimony. Therefore, we generally defer to credibility determinations made on the property. In the instant case, we see no reason to deny the credibility determinations the deference to which they are usually entitled. Accordingly, we hold that Carrier proved the charges related to the September 14 incident by substantial evidence.

Generally, dishonesty is a dismissible offense, both in the railroad industry as a whole and under Carrier's UPGRADE. We see no special or extraordinary circumstances that might justify a different result in the instant case. Accordingly, we hold that the penalty of dismissal was not arbitrary, capricious or excessive.

Thus, Carrier did not violate the Agreement when it dismissed Claimant in connection with the September 14 incident. We therefore see no need to address the September 8 incident as any review of the Level 2 discipline imposed would not make a difference in the outcome of this case.

AWARD

Claim denied.

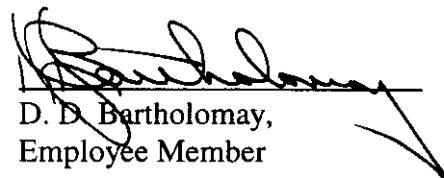


Martin H. Malin, Chairman



D. A. Ring,
Carrier Member

Dated at Chicago, Illinois, September 26, 2003.



D. D. Bartholomay,
Employee Member