

**PUBLIC LAW BOARD NO. 6319**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES** )  
 ) Case No. 1  
and )  
 ) Award No. 1  
**BELT RAILWAY COMPANY OF CHICAGO** )

Hearing Date: July 21, 2000

**Claim of the System Committee of the Brotherhood that:**

- ## FINDINGS:

On February 18, 1999, Carrier notified Claimant that his employment was terminated, effective immediately. Pursuant to the Agreement, Claimant requested a formal hearing. By letter dated February 22, 1999, Carrier scheduled the hearing for February 25, 1999. The letter charged Claimant with alleged vandalism of and damage to BRC vehicle A-221 during his regular tour of duty on September 14, 1998. The hearing was postponed to and begun on March 4, 1999. The hearing did not conclude on March 4, 1999, but was continued to, and concluded on, March 25, 1999. By letter dated March 29, 1999, Carrier reaffirmed Claimant's dismissal.

The Organization contends that Claimant's due process rights were violated in several respects. First, the Organization objects to the length of time that elapsed between the alleged incident and the hearing. The Organization further objects that Claimant's due process rights were violated when the hearing was not completed in one day. The Organization attacks Carrier's use of a written statement from a former employee, instead of having that individual testify. The Organization also maintains that Claimant's due process rights were violated when Carrier's highest designated officer failed to recuse himself from hearing Claimant's appeal, even though he had been involved in the investigation of the incident that gave rise to Claimant's dismissal.

On the merits, the Organization contends that Carrier failed to prove the charge. The Organization argues that there are numerous inconsistencies in the testimony of the principal witnesses against the Claimant.

Carrier contends that it afforded Claimant a fair and impartial hearing and a fair and impartial review. On the merits, Carrier maintains that it proved the charge by substantial evidence.

We shall consider the due process issues first. The record reveals that Carrier employed a private security firm which placed an individual under cover, working as a track laborer. The identity of this individual as an agent of the security firm was unknown to all except a few of Carrier's officers. The individual submitted a report which was transmitted to Carrier on February 17, 1999. It was at that point in time that Carrier first learned of the alleged vandalism of the truck in question. Carrier acted promptly to investigate the incident and dismiss Claimant. We find no due process violation resulting from the time that elapsed between the alleged incident and the hearing.

We further find no violation of Claimant's rights by the continuation of the hearing from March 4 to March 25, 1999. The hearing was continued because Claimant objected to the use of written statements from two former employees. The continuance enabled Carrier to secure the presence of one of those former employees as a witness. This afforded Claimant the opportunity to cross-examine that witness. Rather than violate Claimant's due process rights, the continuance actually safeguarded them.

Carrier did introduce the written statement of one former employee who did not testify. However, because that individual was no longer subject to Carrier's control, we cannot find that Carrier's failure to call him as a witness violated Claimant's due process rights.

Finally, we consider Carrier's highest designated officer's failure to recuse himself. We find no due process violation for two reasons. First, following the affirmation of Claimant's dismissal, the Organization appealed to Carrier's Chief Engineer. There is no claim that the Chief Engineer was not fair and impartial. Thus, by the time the Organization appealed to

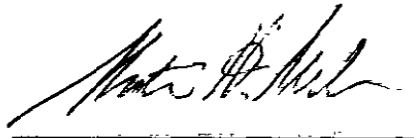
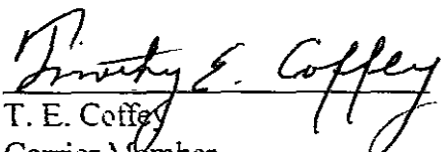
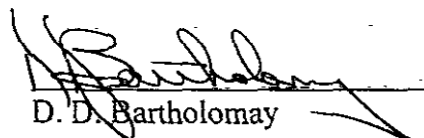
Carrier's highest designated officer, Claimant had already had an impartial appellate review.

The record reveals that Carrier's highest designated officer received the initial report from the private security firm. He then turned the matter over to Carrier's Chief of Police for investigation. The highest designated officer was not shown to have had further involvement in the investigation or the decision to dismiss the Claimant. Although it would have been better had another individual who had had no prior involvement with the matter considered the final appeal, we cannot say, in light of the level of prior involvement of the highest designated officer and in light of Claimant's already having had one impartial appellate review, that the highest designated officer's failure to recuse himself provides a basis for setting aside the discipline.

Turning to the merits, our review of the record reveals that a co-worker testified that Claimant stated it would be cool for the vehicle to have a flat tire. The undercover agent testified that he saw Claimant place a spike under a rear tire, causing it to blow out. The agent's testimony was corroborated by the written statement from another former employee. Although there are some minor inconsistencies in the testimony and the statements, we cannot say that these inconsistencies provide a basis for overturning the factual findings made on the property. Rather, our review of the record convinces us that Carrier proved the charge by substantial evidence.

#### AWARD

Claim denied.

  
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Martin H. Malin, Chairman  
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T. E. Coffey  
Carrier Member  
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D. D. Bartholomay  
Employee Member

Dated at Chicago, Illinois, December 20, 2000.