

BEFORE PUBLIC LAW BOARD No. 6568

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

BANGOR & AROOSTOOK RAILROAD COMPANY

Case No. 6

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

1. The dismissal of Section Foreman Joey Potvin for his alleged unauthorized absence on January 10, 2002 and falsification of the timesheet for that day was without just and sufficient cause and excessive and undue punishment.
2. Section Foreman Joey Potvin shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

BACKGROUND:

Claimant Joey Potvin entered the service of the Carrier on July 17, 1979 as a Trackman and was promoted to Section Foreman on May 10, 1994. On January 15, 2002, the Carrier notified Claimant to appear for a formal hearing to determine his responsibility, if any, in connection with the report that he had absented himself without authority from his duties as Section Foreman at Fort Kent, Maine on January 10, 2002 and thereafter falsified his timesheet for January 10, 2002 by claiming pay for time not worked on that date. The hearing was held on January 17, 2002. Thereafter, the Carrier notified Claimant that he was found to have violated Carrier's Rules H, 9010, and 9012. For these violations, and his prior record, Claimant was dismissed from service on January 25, 2002.

THE RULES AT ISSUE:

Carrier's Rules H, 9010, and 9012 provide as follows, in relevant part:

Rule H

No time or wages are to be entered on timeslips or payrolls except for work actually performed by the person whose name appears thereon.

* * * *

Rule 9010

Employees who are dishonest...will not be retained in the service.

* * * *

Rule 9012

Employees must report for duty at the prescribed place and time. If subject to call, they must not absent themselves from their usual calling place without giving notice to those required to call them. Employees must not absent themselves from duty or engage a substitute to perform their duties without permission of a supervisor.

FINDINGS:

The facts giving rise to Claimant's dismissal are largely undisputed. Roadmaster L. Fournier notified Claimant and his crew at approximately 8:30 a.m. on January 10, 2002 that he wanted to have a meeting with them during their lunch break that day at the Fort Kent Car House. At no time that morning, or at any prior time, did Claimant ask permission of Roadmaster Fournier to be absent from the property that day.

Roadmaster Fournier arrived at the Car House at approximately 11:20 a.m. Although Section Crewmembers Nadeau and Wishart were present, Claimant was not. During the meeting with the two Crewmembers, Roadmaster Fournier learned that Claimant had left the property at approximately 9:30 a.m. and had not returned. In

addition, Roadmaster Fournier discovered that Claimant had absented himself from his entire tour of duty as Section Foreman at Fort Kent on December 27, 2001. Roadmaster Fournier reviewed the Section Crew's timesheets and learned that Claimant had submitted his time sheet for eight hours of pay for December 27 and had entered into the Ledger at Fort Kent that he had worked eight hours at Houlton with his crew on December 27. Roadmaster Fournier left the Car House at approximately 12:30 p.m., and Claimant had still not returned to his assignment.

Roadmaster Fournier and Roadmaster Jeff Lawler were present at Fort Kent the morning of January 11, 2002 when Claimant reported to work. They confronted Claimant with the information they had uncovered regarding December 27, and they withheld him from service pending a formal investigation. Claimant was told to submit a timesheet for his service up to that point. Claimant submitted a timesheet and made claim for a full eight hours of pay for January 10, 2002 even though he had been off the property for more than three hours.

During the formal investigation of this incident, Claimant testified that he left the Carrier's property in order to keep an appointment at the nursing home where he mother had been placed. He thought he would be gone for only two hours and would be back in time for the meeting with Roadmaster Fournier. The meeting at the nursing home took longer than expected, however, and Claimant did not return to work until approximately 12:30 p.m.

Claimant further testified that he intended to use comp time to reimburse the Carrier for the time he had spent away from work on January 10. In fact, Claimant testified that

he worked overtime on December 28, 2001, which he was going to apply to his absence on January 10. However, Claimant was also charged with falsifying time on December 27, 2001. During the investigation of that matter, he stated that he planned to use the three and one-half hours of comp time he earned on December 28 to cover part of his absence on December 27.

Based upon these events, the Carrier contends that Claimant absented himself from his duties on January 10, 2002 without authorization even though (1) he knew he needed permission to leave the Carrier's property during working hours, and (2) he had opportunity to seek permission when he saw Roadmaster Fournier at 8:30 a.m. that morning. The Carrier further contends that Claimant intentionally made claim for pay for time he did not work on January 10, and then attempted to cover up his violation by stating that he had already accumulated comp time on December 28. According to the Carrier, by virtue of Claimant's own testimony, it is clear that he violated Carrier's Rules H, 9010, and 9012. His dismissal for these serious violations was neither arbitrary nor capricious, especially in light of the fact that this was Claimant's fourth attempt to collect a monetary windfall through improper means.

The Organization challenges Claimant's dismissal as arbitrary, capricious, and excessive. It also submits that the Carrier committed procedural violations by dismissing Claimant prior to his hearing and by failing to furnish Claimant with a timely statement of the charges against him. An additional procedural violation occurred, asserts the Organization, because Claimant was dismissed without benefit of a full and fair hearing before an officer superior in rank to the officer who preferred the charges.

As to the accusation that Claimant intentionally falsified his time, the Organization contends that the Carrier has failed to prove through clear and convincing evidence that Claimant intended to act dishonestly. Claimant had an important meeting at his mother's nursing home. He was told it would be brief, and he fully intended to be back to work in time for Roadmaster Fournier's meeting. Given his family emergency, Claimant felt he could take the time as long as he made it up. Inasmuch as Claimant was dealing with difficult family circumstances, and recognizing his lengthy seniority, the Organization submits that dismissal was an excessive and unduly harsh penalty.

OPINION OF THE BOARD:

This Board has reviewed the procedural arguments raised by the Organization and finds them to be without merit. Article IV, Section 1 of the Agreement reads:

The hearing will be held within ten (10) calendar days of the date when charged with the offense or held out of service.
(Emphasis added.)

Given Claimant's past history in regard to the improper submission of time for pay purposes, the Carrier was within its rights in holding him out of service pending completion of its investigation. Claimant was held out of service on January 10, 2002, and thereafter was granted a hearing on January 17, 2002. This was consistent with the time requirements set forth in Article IV, Section 1. Claimant received written notice of the charges against him on January 15, 2002, prior to his hearing on January 17. That hearing was conducted before an officer superior in rank to the charging officer, and it afforded Claimant a full and fair opportunity to defend himself against the Carrier's charges.

As to the merits of the claim, the Board has carefully reviewed the testimony and evidence in the Record. It is the Board's finding that the Carrier has proved with clear and convincing evidence that Claimant absented himself from his regular assigned duties and left the Carrier's property without permission on January 10, 2002. Such conduct constituted a violation of the Carrier's Rule 9012. Additionally, Claimant dishonestly submitted a time slip claiming pay for a full tour of duty on January 10, 2002 even though he absented himself for more than three hours. Such conduct was a violation of Carrier's Rules H and 9010. Claimant attended a meeting with Roadmaster Fournier at 8:30 a.m. on January 10. He had ample opportunity to tell Roadmaster Fournier about his personal problem and to ask permission to leave work for a few hours. Furthermore, Claimant knew about the nursing home appointment on January 9, 2002. Clearly, he could have spoken to Roadmaster Fournier about the matter at that time, as well.

While Claimant insists he never intended to act dishonestly, his words cannot be reconciled with his actions. The only conclusion that can be drawn is that he scheduled a personal appointment to be held during working hours; he deliberately withheld that fact from his supervisor; and he compounded his unauthorized absence by seeking pay for the hours he was away from work attending to personal business.

Claimant attempted to defend his behavior by explaining that he had accumulated overtime on December 28, 2001, which he planned to apply to the time he was away from the job on January 10. This was not a valid explanation, however, because in seeking to justify similar time card falsification on December 27, 2001, Claimant testified that the time worked on December 28 was to cover part of his absence on December 27.


As the Carrier stated, "A person can only spend his quarter once." The overtime Claimant worked on December 28 could not cover his unauthorized absences on both December 27, 2001 and January 10, 2002.


Claimant's own testimony amply demonstrates that he violated the rules for which he was dismissed. Moreover, on four prior occasions, Claimant sought to obtain monetary benefits through improper means. As recently as December 1997, he was suspended for 180 days and disqualified as a Section Foreman. Award No. 1 of Public Law Board No. 6367, dated May 29, 2001, permitted Claimant to retain his Section Foreman rights back to 1994 but upheld his lengthy suspension.


Regrettably, in less than eight months after the issuance of this Award, Claimant again sought to cheat his employer. Claimant's dishonest behavior in regard to his time on both December 27 and January 10 provides ample proof that even a lengthy suspension was ineffective in bringing about a positive change in Claimant's attitude and respect for the Carrier's rules. Accordingly, this Board finds that Claimant's dismissal was based on just cause.

AWARD:

The dismissal of Section Foreman Joey Potvin for his unauthorized absence on January 10, 2002 and falsification of his timesheet was for just and sufficient cause. His dismissal is hereby upheld, and the claim is denied.


CARRIER MEMBER
DATED: 2/27/03


JOAN PARKER, Neutral Member


ORGANIZATION MEMBER
DATED: 2-27-03