

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 25

Statement of Claim: It is the claim of the System Committee of the Brotherhood that:

1. The discipline (Level 5 permanent dismissal) imposed upon Mr. J. E. Reeves On May 16, 2000 in connection with charges of allegedly failing to inform his supervisor of improper removal of box trailer while employed as a supervisor of Lathrop Intermodal on October 22, 1999 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement
2. As a consequence of the violation referred to in Part (1) above, Claimant J.E. Reeves shall now "...be reinstated to the service of the Carrier on his former assigned position, with seniority and all other rights restored unimpaired, compensated for all wage and benefit loss suffered by him, and the alleged charges(s) be removed from his personal record."

Background

Claimant Jason Reeves was hired by the Carrier on May 21, 1998. Between May 21, 1998 and January 30, 1999, he was absent from work without authority on three separate occasions for which he was disciplined and eventually dismissed. Thereafter, the Organization sought his reinstatement, and during the handling of the claim, the Carrier agreed to reinstate Reeves on a leniency basis. The terms of the reinstatement were set forth in a letter agreement, dated November 29, 1999, which was signed by the Organization on December 14, 1999. The Reinstatement Agreement provided:

If at any time during an eighteen (18) month period commencing with the date he returns to service, Mr. Reeves commits any rule violation, he may be reverted back to the status of dismissed employee without

the benefit of a hearing pursuant to the applicable disciplinary rules. At the end of any probationary period, Mr. Reeves will be required to continue to abide by all rules as contained in the rules of the Carrier.

Both Claimant and his General Chairman accepted the terms of the Reinstatement Agreement, and Claimant was then placed in a furlough status until his return to work on March 3, 2000.

By letter dated April 25, 2000, Claimant was removed from service for failing to report to his supervisor the improper removal of a box trailer from Union Pacific's Lathrop Intermodal Facility on October 22, 1999. On that date, Claimant was working as a gate supervisor for a subcontractor of the Union Pacific Railroad.

Following a hearing that was held on May 4, 2000, Claimant was dismissed for violating the Carrier's rules 1.2.7 (Furnishing Information); 1.4 (Carry Out Rules and Reporting Violation); and 1.6 (#4) (Conduct). The Organization appealed and, ultimately the claim was conferenced between the parties on February 27, 2001. However, the matter was not resolved, and it was therefore submitted to this Board for determination.

The Record reveals that on October 22, 1999, Claimant was working for RTS (Rail Terminal Services). His duties included loss prevention as it pertained to unauthorized removal of trailers. On the night in question, after going off duty, Claimant took another employee in his personal vehicle and followed two trailers that were improperly driven away from the Intermodal Ramp. Claimant drove the other employee to various locations and ultimately to a spot north of Modesto. At some point, he was given money allegedly to cover his gas costs. Subsequently, it was revealed that the employee whom Claimant drove was involved in a theft ring that, with insider information, stole trailers and cargo.

Claimant admitted that he suspected that the conduct he observed was illegal. He claimed, however, that on the night in question, he neither participated in nor observed any activity that he knew was wrongful.

Contentions of the Parties

The Carrier contends that Claimant was afforded full due process. Even though the Carrier was not required to schedule a hearing under the terms of Claimant's Leniency Reinstatement Agreement, he was granted a full and fair hearing with union representation. As to the merits, the Carrier submits that even though Claimant was in a dismissed status on October 22, 1999, he still retained a relationship with the Carrier, as evidenced by the General Chairman's progression of a claim on his behalf, which resulted in his conditional reinstatement. As a gate keeper at the Intermodal Facility, Claimant had a responsibility to report the misappropriation of goods for which Union Pacific was liable.

The Organization contends that Claimant was unjustifiably charged because on October 22, 1999, he was an employee of RTS, not Union Pacific, and therefore was not obligated to adhere to Union Pacific's rules. Additionally, the Organization asserts that the Carrier never demonstrated the Claimant knew anything illegal was occurring on the night in question.

Findings

Based upon a review of the testimony and evidence below, this Board is compelled to conclude that at best, Claimant's conduct was irresponsible and suspicious, and at worst, it was dishonest and wrongful. While he testified that he was unaware of what

was happening on October 22, 1999, and did not become suspicious of what transpired until two weeks later when he again gave a ride to the employee who approached him on the night in question, this story was not convincing. Claimant was a Gate Supervisor. He should have immediately become concerned as he followed two trailers leaving the facility. Shortly after exiting, the employee to whom Claimant was giving a lift got out and conferred with the drivers of the trailers. Claimant was then asked to drive to several locations and was ultimately offered "gas money" for his efforts. The entire episode, as described by both Special Agent D.H. Jackson and Claimant himself, was suspicious and should definitely have aroused the concern of Claimant who was employed as a Gate Supervisor.

But even assuming *arguendo* that Claimant truly was unaware of what transpired until a week or two later, he had no valid excuse for not revealing then what he had observed on October 22nd. His claim that he was afraid even to tell his brother, who worked for Union Pacific, was unpersuasive. He suspected there was an insider theft ring, and he knew that he had tacitly assisted its illegal activity on October 22nd. Therefore, he had an absolute duty promptly to report the incident to his supervisor. Regrettably, he waited to say anything until he was approached by Special Agent Jackson months later.

The Organization's contention that Claimant had no duty to tell what happened because he was not subject to the Carrier's rules on October 22nd is without merit. Claimant was on the Carrier's seniority roster and was in the process of appealing discipline through the Organization. Moreover, he was working at a Carrier facility. His

responsibility both to the subcontractor and Union Pacific was to report theft or misappropriation of cargo.

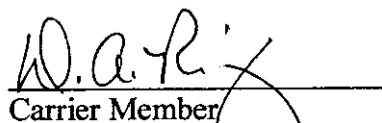
Employees who have cases under appeal, such as Claimant, are considered as having an employment relationship with the Carrier and are still obligated to adhere to the Carrier's rules. This principle has been recognized in several arbitration awards in the railroad industry including *Public Law Board No. 4716, Award No. 94 (Wesman)*; *Public Law Board No. 164, Award No. 199 (Daugherty)*; and *Second Division Award 10780 (Mikrut)*.

Claimant's dereliction of duty was serious. Cargo theft in the railroad industry is a significant problem, and Claimant was required to report the unauthorized removal of two trailers which, as it turned out, were carrying cargo with a value in excess of \$100,000. The fact that Claimant suspected that an insider ring was operating made his decision to keep silent all the more troubling.

Moreover, Claimant was a short-term employee who was terminated for the second time in April 2000 and who had accumulated significant discipline during his two years of employment. Given the seriousness of his actions in this matter and his unsatisfactory prior record, there are no mitigating factors which would warrant a reduction in penalty.

Award

The claim is denied.


Carrier Member

Dated: MAY 6, 2004


Joan Parker, Neutral Member


Organization Member

Dated: 5-6-04