

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1039
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN PACIFIC RAILWAY COMPANY

Case No. 2

STATEMENT OF CLAIM:

Appeal of Claimant Clarence W. Smith

FINDINGS:

On January 26, 1999, the Claimant was notified by the Carrier to appear for a formal investigation into the charges that he allegedly falsified and abused lodging and camper receipts and meal expenses on his expense account for the months of May through August, and November of 1996; January through May, August, and September of 1997; and January of 1998.

After a mutually agreed upon postponement, the hearing was conducted on February 11, 1999, and it was determined that the Claimant was guilty as charged. Consequently, the Claimant was dismissed from the Carrier's service.

The Organization filed the instant claim on behalf of the Claimant under the provisions of the Agreement.

The parties being unable to resolve the issues, this matter comes before this Board.

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 failing to abide by the rules with respect to lodging and meal expenses. The

record is clear that the Claimant either falsified receipts or carelessly reported his expenses on several occasions in 1996, 1997, and January of 1998. The Claimant simply failed to abide by the Carrier policies and it appears clear that he falsely reported some of his expenses.


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 action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case has been employed by the Carrier for 27 years. His record contains no previous discipline. Consequently, despite the fact that this Claimant was guilty of the type of offense which usually leads to dismissal, this Board finds that given the lengthy seniority of the Claimant, the Carrier should have merely suspended him for a lengthy period of time and required that he repay the monies for the expense claims that were falsified.

This Board finds that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant's 27 years of seniority and dismissed him. Therefore, we order that the Claimant shall be reinstated, but without any backpay, and further that he reimburse the Carrier for all monies expended by the Carrier for expenses which the Claimant did not truly and legitimately incur on behalf of the Carrier.

AWARD

Claim sustained in part. Claimant shall be reinstated to service but without backpay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension. In addition, Claimant must reimburse the Carrier for all monies expended by the Carrier for expenses for the Claimant which were not legitimately incurred in pursuit of the Carrier's business.


PETER R. MEYERS, Neutral Member

Dated: May 17, 1999