

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 31

STATEMENT OF CLAIM:

Appeal of Claimant Robert A. Lucansky's termination from the Carrier's service.

FINDINGS:

On October 6, 1995, the Carrier notified Claimant Robert A. Lucansky that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in connection with his alleged falsification of portions of his lodging expenses on his September 1995 employee expense account.

After one postponement, the hearing took place on October 19, 1995. On November 2, 1995, the Carrier notified the Claimant that he had been found guilty of all charges and was being terminated from the Carrier's service effective that date.

The Claimant advised the Carrier of his intention to appeal the discipline under the provisions of the Agreement of June 1, 1990.

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

This Board has thoroughly reviewed the record in this case, and we find that the Carrier has not presented sufficient evidence to support the finding that the Claimant was guilty of falsifying portions of his lodging expenses on his September 1995 expense account. Therefore, the claim will have to be sustained.

The record reveals that on at least two occasions in the month of September 1995, the

Carrier sent an investigator to the Claimant's home to observe whether or not his camper was in his driveway. On two occasions, the investigator found the Claimant's camper in his driveway. From that evidence, the Carrier came to the conclusion that the Claimant had not camped out those evenings and, therefore, his request for reimbursement for lodging expenses for those nights were fraudulent. In other words, the fact that the Claimant's vehicle was in his driveway was deemed sufficient proof by the Carrier to determine that he had not camped out on those evenings.

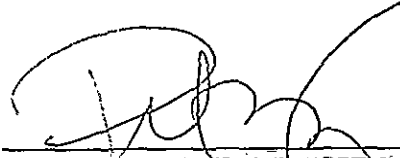
However, the Claimant has offered a reasonable explanation for the camper not being in his driveway while he was camping out on those occasions. The explanation, that he was using another vehicle for the evening, was not rebutted by the Carrier. The Carrier presented no evidence that it observed the Claimant in his home on the nights in question, nor did the Carrier present any evidence that it had gone to the campsite and not found the Claimant there. The Carrier's case is based entirely on the report of the investigator who simply stated that the Claimant's vehicle was in his driveway on the nights in question.

This Board is mindful of the poor record of the Claimant, which includes several suspensions prior to the Claimant's discipline. This Board is also aware of the Claimant's behavior during the hearing in this case. However, this Board must view the evidence that was presented and make a determination as to whether or not the Claimant was in violation of the rule with which he was charged. In this case, given the insufficient evidence presented by the Carrier, this Board cannot find that the Claimant was in violation of the rules requiring him to not falsify his lodging expenses on his expense account.

Therefore, the claim must be sustained.

AWARD:

The claim is sustained. The Claimant is reinstated to the service of the Carrier with full back pay and other benefits which he lost as a result of being improperly terminated.



PETER R. MEYERS
Neutral Member

Dated: January 29, 1996