

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN PACIFIC RAILWAY COMPANY

Case No. 53

STATEMENT OF CLAIM:

Appeal of Claimant Ronald G. Fisher

FINDINGS:

On August 24, 1998, the Claimant was notified by the Carrier to appear for a formal investigation into the charges of his alleged failure to provide correct information regarding his physical activities on Saturday, August 8, 1998, following an alleged personal injury which he incurred on August 6, 1998, in violation of General Code of operating Rule 1.2.7 and other General Code of Operating Rules.

After several mutually agreed upon continuances the hearing was conducted on October 30, 1998, and it was determined that the Claimant was guilty as charged. Consequently, the Claimant was issued a five-day suspension.

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 failed to provide totally correct information about his physical activities on August 8, 1998. The

Claimant did indicate that he had been laying around most of the weekend when, in fact, he had helped his brother perform some work on that Saturday.

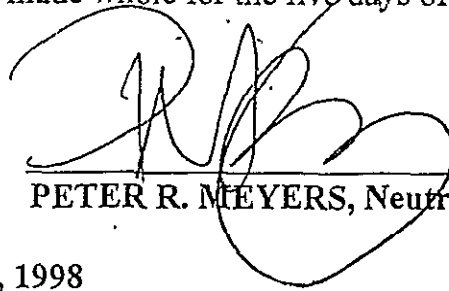
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The Claimant in this case received a five-day suspension for his failure to provide correct information in this case. Given the Claimant's lengthy seniority which dates back to 1979, as well as his excellent disciplinary record which includes no previous discipline, this Board must find that the discipline issued to him by the Carrier was unreasonable under the circumstances. The violation was relatively minor. The Claimant was clearly injured on August 6, 1998, and although he was not totally accurate when he reported what he did on August 8, 1998, his mis-statement had no major impact. Consequently, this Board must find that there was no just cause for the issuance of the five-day suspension and it should be removed from his record and the Claimant should be made whole. The five-day suspension shall be reduced to a written warning which shall be placed in the Claimant's disciplinary file.

AWARD

Claim sustained in part and denied in part. The five-day suspension of the Claimant is to be removed from his record and shall be replaced by a letter of reprimand.

The Claimant shall be made whole for the five days of work that he missed.

A large, stylized handwritten signature in black ink, appearing to read 'P. Meyers', is written over a horizontal line.

PETER R. MEYERS, Neutral Member

Dated: December 21, 1998