

SPECIAL BOARD OF ADJUSTMENT NO. 1122

BROTHERHOOD OF MAINTENANCE	)	
OF WAY EMPLOYEES	)	
	)	
and	)	AWARD NO. 60
	)	CASE NO. 60
NORTHEAST ILLINOIS REGIONAL	)	
COMMUTER RAILROAD - METRA	)	

STATEMENT OF CLAIM:

Claim on behalf of A. Irvin, B&B track foreman, for expungement of discipline assessed, payment for all time lost, and reimbursement for benefits lost during time withheld from service.

FINDINGS:

Special Board of Adjustment No. 1122, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act; as amended; that the Board has jurisdiction over the dispute herein.

The Claimant worked as a Track Foreman headquartered at the 47th Street yard in Chicago, Illinois. He worked under the supervision of R. Worley. The Claimant's tour of duty was Tuesday through Saturday, 7:00 am to 3:30 pm.

On Sunday, May 17th, 2009, Claimant and his gang were assigned to work overtime. Claimant left around noon.

At approximately 6:00 pm, Claimant was detained by Blue Island police, who noticed that he was driving a Metra backhoe on Western Avenue in Des Plaines, Illinois. Metra Police Sergeant W. Pugh was contacted and when he arrived at the scene, he asked the Claimant why he was driving a piece of heavy equipment on the highway on a Sunday evening. The Claimant responded that he was working overtime. The record shows that the Claimant had earlier called a co-worker, asking him to verify that the backhoe was being used for work-related purposes on overtime. The co-worker refused.

Sergeant Pugh contacted Supervisor Worley, who confirmed that the Claimant did not have permission to remove the backhoe from Metra property. Claimant then admitted to Sergeant Pugh that he had been using the backhoe at his private residence to dig a foundation. A Metra police officer was sent to inspect the Claimant's property. He verified that digging work had in fact taken place and an old house was partially torn down.

In accordance with Supervisor Worley's directive, Claimant was taken out of service. He was subsequently notified by letter dated May 19, 2009 to attend an investigation in connection with the events that had taken place. Because the May 19, 2009 notice omitted the date of the incident, a revised notice was sent to the Claimant by letter dated May 20, 2009, reiterating the charges and including the date of the alleged incident. The investigation was held on May 27, 2009, after which time the Carrier determined that the Claimant was guilty of the charges. Claimant was removed from service effective June 8, 2009.

At the hearing, Claimant acknowledged that he took the Metra backhoe without permission. He stated that the contractor who was working on his house left in the middle of the job, so the Claimant took the backhoe from Metra property to finish the work at his residence. Claimant admitted that he made a mistake and apologized for the incident. In addition, Roadmaster J. Jachna testified on his behalf, stating that the Claimant was a very reliable and responsible employee who could be counted upon to report for snow duty and unanticipated overtime, even when he was on vacation. The record further shows that the Claimant has had an exemplary record since he began his employment with the Carrier in September 2001.

The Board has reviewed the record in its entirety and has thoroughly considered all the evidence and testimony presented. There is substantial evidence, including the Claimant's own admission, to support the conclusion that the Claimant took a backhoe off Carrier property for personal use without authorization. This serious error of judgment was exacerbated when the Claimant untruthfully claimed to be working overtime when he was discovered driving the backhoe on a commercial street. Claimant compounded the misconduct even further when he attempted to get another employee to lie for him. These significant transgressions were a breach of acceptable employee behavior. Discipline clearly was warranted.

This Board recognizes that the Claimant has an excellent service record and we are not unsympathetic in light of this mitigating circumstance. However, the Carrier cannot operate if its employees take machinery for their own use with impunity. Dishonesty and misappropriation of goods constitute unacceptable conduct which have long been considered dismissable offenses in this industry. The Claimant was afforded a fair and impartial investigation and there are no due process or procedural defects which would serve to vitiate the discipline imposed. Based on these factors we do not find any justification for concluding that the Carrier's assessed discipline was an arbitrary or unreasonable determination.

AWARD

Claim denied.

A handwritten signature in cursive script, appearing to read "Ann S. Kenis", written over a horizontal line.

**ANN S. KENIS
Neutral Member**

Dated this 30th day of August, 2009.