

SPECIAL ADJUSTMENT BOARD NO. 180

Decision No. 1161
Case No. 1979

PARTIES TO DISPUTE:

Brotherhood Of Locomotive Engineers

And

Southern Pacific Transportation Company (Western Lines)

STATEMENT OF CLAIM:

Claim of Tucson District Engineer P. A. Peters for reinstatement to the service of the Company with full seniority and all other employment rights restored, and that she be compensated for all time lost from date of dismissal on January 3, 1985, until she is returned to duty (May 1, 1985).

FINDINGS:

Claimant entered Carrier's service on May 5, 1979, and at the time of the incident in question was employed as an Engineer on Carrier's Tucson District.

By letter dated December 21, 1984, Claimant was notified to attend an investigation concerning charges that she falsified her Time Return on December 17, 1984. An investigation was held on December 27, 1984. By letter dated January 3, 1985 Claimant was informed of her dismissal from service for her guilt concerning the aforementioned charge. On May 1, 1985, Claimant was reinstated to service by Carrier.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The position of the Carrier is that Claimant violated Rules B, E and 801 of the Agreement and was properly disciplined for those violations. The Carrier contends that Claimant falsified her Time Report on December 17, 1984. The Carrier first alleges that the Claimant's train arrived at the depot at 8:25, whereas the Claimant reported arrival to be at 9:00 p.m. The Carrier additionally alleges that Claimant reported her arrival time at Casa Grande Depot to be 9:45 p.m., while later admitting that she arrived there at 8:35 p.m. The Carrier finally alleges that Claimant reported her off duty time to be 10:00 p.m. while later admitting the actual time to be 8:40 p.m. The Carrier maintains that Claimant requested four hours of overtime pay when she knew she was not entitled to one hour and twenty minutes of that overtime.

To support its allegations, the Carrier cites Claimant's own testimony, which it alleges constitutes an admission that she purposely and willfully falsified her Time Return for the date in question. The Carrier contends that Claimant's assertion that she was told it was alright to report the additional time since she did not eat on her shift is unfounded. The Carrier further contends that Claimant's failure to eat on her shift was for her own convenience, not that of Carrier's. The Carrier concludes that Claimant had no authorization to falsify her Time Report, and is clearly guilty of the offense charged.

Finally, Carrier maintains that the discipline imposed was reasonable under the circumstances. The Carrier contends that the offense of dishonesty is a serious one, meriting severe punishment. The Carrier concludes that the discipline imposed was reasonably commensurate with the offense committed.

The position of the Organization is that Claimant was unjustifiably disciplined by Carrier. The Organization contends that Claimant did not falsify her Time Report on the date in question, but rather merely followed a long-standing practice of claiming additional time when unable to stop for a meal during a shift. In support of its position, the Organization cites the testimony of Conductor Watson, who testified that it was common practice to claim the additional time when unable to stop for a meal enroute. The Organization additionally cites Claimant's testimony where she also indicated that it was a routine practice to claim the additional time. The Organization maintains that the above-cited testimony establishes that Claimant only followed standard procedure and did not "falsify" her report as alleged by Carrier.

The Organization maintains that Carrier has recognized this long-standing practice and had not previously warned Claimant's crew that such a practice was unacceptable. The Organization contends that Carrier should have simply denied the extra time if it felt unobligated to pay the additional overtime.

Finally, the Organization contends that the Carrier failed to prove any intent to defraud on Claimant's part, which it

alleges is essential to prove Claimant's guilt concerning the charges. In support of its position, the Organization cites several Awards holding that intent must be shown to sustain a charge of dishonesty. Finally, the Organization cites several letters verifying Claimant's reputation for honesty in the community. The Organization concludes that the Carrier has failed to establish Claimant's guilt and that the discipline imposed was unwarranted.

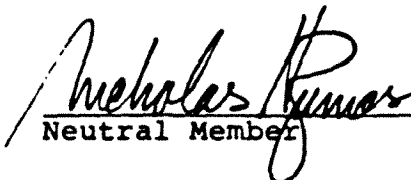
After review of the entire record, the Board finds that the Claim must be sustained.

The Carrier has failed to prove through substantial evidence that Claimant was guilty of dishonesty. Rule 801, cited by Carrier, states in part that "Any act of ... misconduct or willful disregard ... is sufficient cause for dismissal". The operative term in that phrase is "willful". The basis for Carrier's charge is that Claimant willfully misrepresented her actual hours on duty. However, we do not find substantial evidence that Claimant knowingly and purposefully perpetrated fraud against Carrier. It is a well established principle that Carrier has an obligation to prove intent in order to find an employee guilty of dishonesty. In the present case, the Carrier has only established that Claimant reported an incorrect number of hours on her time report for the date in question. The Carrier has nowhere demonstrated that Claimant deliberately tried to "cheat" it out of additional overtime pay. To the contrary, the evidence of record indicates that Claimant entered the


additional time on the good-faith belief that such practice was condoned by Carrier. We, therefore, find that under the circumstances, the discipline imposed by Carrier was unwarranted. We agree with the Organization that Carrier should have disallowed the additional time requested and informed Claimant that such practice would not be condoned in the future.

AWARD:

Claim sustained.



Neutral Member



Carrier Member



Organization Member

Date: Jan 10, 1986