

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924  
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 178

Award No. 158

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of Boom Truck Operator J. E. Ostrander for alleged misuse of Company time, falsification of work reports and having an unauthorized person in the boom truck was without just and sufficient cause, without support, excessive and capricious (Organization File 6LF-2338D; Carrier File 81-90-49).
2. The Claimant shall have his record cleared of this incident and made whole for all loss of work opportunity as provided in Rule 19 of the Agreement.

FINDINGS:

Claimant J. E. Ostrander was employed by the Carrier as a machine operator at Chadron, Nebraska.

On November 21, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

- a) Misuse of Company time;
  - b) Falsification of work reports; above items are for November 6, 7, 8, 1989; and
  - c) Having an unauthorized person in the boom truck on November 8, 1989.
- The above information was received in the Engineering Department on November 21, 1989.

After one postponement, the hearing took place on December 6, 1989. On December 13, 1989, the Claimant was dismissed effective that date. The Organization filed a claim seeking the Claimant's reinstatement to the service of the Carrier, along

with compensation for all time lost. The Carrier denied the claim.

The parties being unable to resolve the issues, this matter came 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 on November 6, 7, and 8, 1989, the Claimant was guilty of violating Rules 601, 604, and 610. The record is clear that the Claimant was not devoting himself exclusively to the Carrier's service while he was on duty, and he was engaged in all types of wrongful activities rather than performing the work which he was required to do. Moreover, this Board finds that the Claimant was guilty of falsifying Company work reports by stating that he had performed work when in fact he had been merely "goofing around."

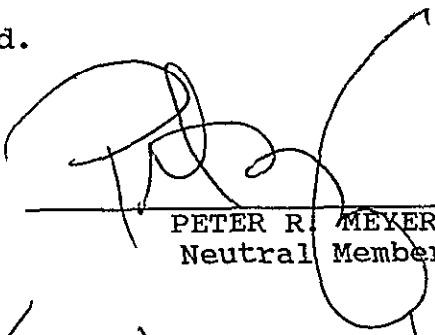
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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


This Board recognizes that this Claimant had served more than sixteen years prior to his dismissal. However, in those sixteen years, the record reveals that the Claimant had received several deferred suspensions, as well as two actual suspensions, for a variety of offenses. Given the serious nature of the

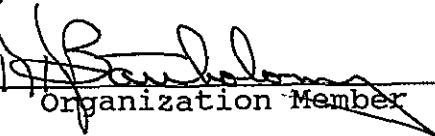
offenses herein, as well as the employment record of the Claimant, which includes a number of reprimands in addition to the disciplinary actions, this Board cannot find that the action taken by the Carrier in this case was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

Claim denied.

  
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PETER R. MEYERS  
Neutral Member

  
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Joan Hurreix  
Carrier Member

  
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H. Baulderson  
Organization Member

Dated: April 24, 1992