

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 229

Award No. 207

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Foreman R. L. Monskey for allegedly falsifying a daily work report for June 19, 1993, was without just and sufficient cause, unwarranted and harsh punishment (System File 7RP-5143D; Carrier's File 81-93-133).
2. Foreman R. L. Monskey shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

On June 19, 1993, the Claimant was assigned to flagging duties for MCI which was laying cable along the Carrier's right of way on the Adams Subdivision in Wisconsin. The Claimant reported for work as scheduled but when he arrived at his job site, he discovered that the contractors did not report for duty because of heavy rains in the area. After waiting until 8:30 a. m., the Claimant canceled the Track Bulletin Form MX and went home. On the following day, the Claimant claimed ten hours of work for the previous day on his payroll slip. The discrepancy was found by MCI and reported to the Carrier. The Claimant was subsequently charged with falsifying his work report and

notified to attend a hearing investigating the matter. After an investigatory hearing, the Claimant was found guilty of falsifying his time report and claiming ten hours when in fact he was only entitled to four hours of pay and he was dismissed.

The Organization contends that the Claimant "inadvertently claimed ten (10) hours' pay for that day rather than the four (4) hours allowed by the Carrier under such circumstances" and that dismissal was improper under the circumstances.

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

This Board has reviewed the procedural argument raised by the Organization and we find it to be without merit. The record reveals that the work report was not reviewed by MCI personnel until June 30, 1993, and the Carrier was only informed at that time. The hearing was first scheduled to be heard on July 9, 1993, and therefore, the Carrier complied with Rule 19(a).

With respect to the question of whether or not the Carrier called all of the appropriate witnesses, this Board has ruled in the past that it is the Organization's responsibility to make sure that its witnesses are present at the hearing.

Turning our attention to the merits, 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 falsified his time records when he put in for ten hours of pay instead of the contractually required four hours of pay on the date in question. Although

the Claimant contends that he "made a mistake" and "got my dates mixed up", this Board finds that he did erroneously fill out the time reports which would have entitled him to six hours of additional pay at the overtime rate.

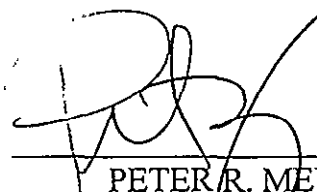
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

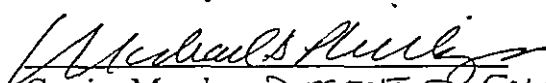
The Claimant in this case has been employed by the Carrier since April 17, 1968. In the over twenty-five years of service with the Carrier, he has received a few suspensions, including a five-day suspension right before his discharge. Given the lengthy time of service with the Carrier, and the previous relatively good disciplinary record, this Board must find that the Carrier acted unreasonably when it terminated his employment for this rule violation. The record does reflect that no payment was ever made to the Claimant and that a correction to the records was made to protect against any loss to the Carrier. Given the lengthy service of the Claimant and the fact that he was only placed on Step 1 of the discipline system for his July 9 incident of discipline, this Board must find that the Claimant shall be reinstated but without backpay. Claimant should recognize that he has been found guilty of a serious infraction and that anything similar in the future will undoubtedly lead to his termination. However, this Board agrees with the Organization that discipline is intended to be remedial rather than punitive and

recognizing the Claimant's 25-years of service, this Board believes that the Carrier acted arbitrarily in terminating his employment. We hereby order his reinstatement without back pay.

AWARD

Claim sustained in part. The dismissal of the Claimant is hereby reduced to a lengthy suspension. Claimant is to be reinstated without backpay but with all seniority and other benefits to which he is entitled.


PETER R. MEYERS
Neutral Member


Carrier Member *DISSENT TO FOLLOW*


Organization Member

DATED: 1-5-95

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