

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

**UNION PACIFIC RAILROAD COMPANY
(former Chicago and North Western Transportation Co.)**

Case No. 254

A w a r d No. 23

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

- (1) The dismissal of Track Supervisor M. Palma for his alleged use of a Carrier vehicle for personal use without proper authority was without just and sufficient cause, in violation of the Agreement, and excessive and undue punishment (Organization File 9KB-6563D; Carrier File 120823 1).
- (2) Track Supervisor M. Palma shall now " * * * be reinstated with all rights unimpaired, be compensated all lost time, be made whole for all losses and have any reference to the investigation removed from his personnel record.

FINDINGS:

Claimant M. Palma was employed by the Carrier as a track supervisor at the time of this claim.

On August 9, 1999, the Carrier notified the Claimant to appear for a formal investigation to develop the facts and place responsibility, if any, in regards to the charges that on August 6, 1999, while working as a track supervisor, the Claimant allegedly used a Carrier vehicle for personal use without proper authority and on Carrier time. The Carrier charged the Claimant with having allegedly violated Rules 1.6, 1.13, 1.15, and 1.19. The Claimant was withheld from the service of the Carrier pending the outcome of the investigation

The hearing took place on August 13, 1999. On August 23, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed a Level 5 dismissal discipline under the UPGRADE discipline policy.

The Organization filed a claim on behalf of the Claimant. The Organization contends that the Claimant has over nineteen years of service with the Carrier and has only had one investigation that occurred over **five** years ago. The Organization further contends that the Claimant was not afforded a fair and impartial hearing when the conducting officer of the hearing refused to step down at the Organization's request. The Organization maintains that the conducting officer met with various witnesses prior to the investigation when **all** aspects, details, and evidence were discussed and, thereby, developed preconceived notions concerning the Claimant. The Organization further argues that the discipline assessed the Claimant was excessive in that the only Level 5 rule cited and discussed at the investigation was Rule 1.6, and nothing in the transcript of the investigation revealed that the Claimant was insubordinate or dishonest.

The Carrier denied the claim, arguing that the transcript reveals that the Claimant was in violation of the rules. The Carrier argues that the conducting officer made the correct decision and did not do so from prior information. The Carrier maintains that there is no rule or agreement provision that precludes the conducting officer from having multiple roles. The Carrier contends that, on the date in question, at mid-morning, the Claimant was observed by Carrier special agents at his personal residence loading material into a Carrier vehicle. The Carrier argues that August 6, 1999, was the

Claimant's normal workday, and the Claimant had no authority to leave the job site with a Carrier vehicle. The Carrier argues that the Claimant did not have permission to use a Carrier vehicle for personal purposes and was expected to be performing Carrier service. The Carrier maintains that the Claimant knew that his conduct was inappropriate and that going to a private residence to perform personal duties is not proper work procedure. The Carrier argues that the Claimant deliberately misappropriated Carrier property for his own use while under pay with the Carrier. The Carrier argues that the Claimant was fully cognizant of his duties and responsibilities and that his discharge was reasonable discipline in accordance with the UPGRADE discipline policy.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. There is no rule or agreement provision that precludes a conducting officer from playing multiple roles in an investigation.

With respect to the substantive issue, 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 used a Carrier vehicle for personal use without proper authority in violation of Carrier rules. It is evident from this record that the Claimant violated Rules 1.6, 1.13, 1.15, and 1.19 when on August 6, 1999, he brought a Carrier dump truck to his private residence and picked up building material. The Claimant admitted that he took this action and that he had no authority to do it.

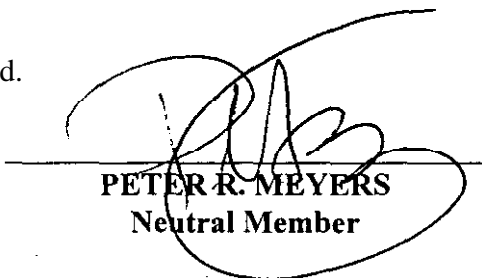
Once this Board has determined that there is sufficient evidence in the record to

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 Claimant was engaged in dishonest activity and used Carrier property and equipment without obtaining permission to do so while he was on Carrier time. That type of behavior is similar to theft from the Carrier, and this Board cannot find that the Carrier's action in terminating the Claimant's employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 4-04-01



CARRIER MEMBER

DATED: 04-11-01