

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY
(FORMER CHICAGO & NORTH WESTERN TRANSPORTATION
COMPANY)

Case No. 263

Award No. 239

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

1. The dismissal (Level 5) assessed Trackman S.A. Clark for his alleged insubordination and driving a company vehicle without the proper license on September 25, 2003 was without just and sufficient cause, excessive and undue punishment and disparate treatment (System File 4RM-9488D/1388459D).
2. Trackman S.A. Clark shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

At the time of the events leading up to this claim, the Claimant was assigned to work for the Carrier as a Trackman on Gang 3408.

By letter dated September 29, 2003, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant allegedly was insubordinate when he left Carrier property prior to quitting time and without proper authority, and that the Claimant allegedly drove a Carrier vehicle without a valid operator's license. After a postponement, the hearing was conducted on October 21, 2003. By letter dated October 30, 2003, the Claimant was notified

that as a result of the hearing, he had been found guilty as charged, and he was being assessed Level 5 discipline, dismissal from the Carrier's service. The Organization filed a claim challenging the Carrier's decision, and the Carrier denied the claim.

The Carrier initially contends that the Claimant was afforded all elements of due process in accordance with the Agreement. The Claimant received adequate notice of his investigation, was allowed ample representation, and was able to present his own witnesses, as well as cross-examine all of the Carrier's witnesses who were present at the investigation. The Carrier points out that the Organization failed to make any procedural objections throughout the on-property handling of this case, which operates as a valid waiver of any such challenge. The Carrier therefore asserts that this claim cannot be granted on any procedural basis.

The Carrier then points out that the Organization chose not to challenge the Carrier's findings that the Claimant violated Rules 1.13 and 74.2. In fact, the Claimant admitted to violating these Rules when he admitted that he operated a Carrier vehicle on Carrier property without a valid operator's license. The Carrier insists that the instant claim must fail because the Claimant violated Rules 1.6(3) and 1.15 when he stranded his gang on the property and left work early, thereby flouting instructions from his supervisor.

The Carrier maintains that every independent witness at the investigation testified that the Claimant was instructed to take the Carrier truck to the rail crossing as part of his duties on the day in question. The Claimant also was

instructed to bring the truck back to the job site because it was his gang's only source of transportation. The Carrier points out that the Claimant nevertheless made a personal decision to leave work early, thereby abandoning his duties and his colleagues without authority to do so. The Claimant's conduct amounted to leaving his assignment without authority and was in direct opposition to his supervisor's instructions.

The Carrier emphasizes that the Claimant admitted that he received and understood his supervisor's instruction, and he knew that his gang would be stranded without the truck because it was their only means of transportation. The Claimant further admitted that he did not return the truck, but instead decided to leave work early because he assumed that it was time to go home. The Carrier asserts that the Claimant's admissions demonstrate his complete personal responsibility for his actions. The Carrier further argues that the fact that the Claimant made these admissions in front of his Organization representative raises questions about the Organization's good faith in progressing the instant claim. The Carrier also points out that these admissions satisfy the Carrier's obligation to show substantial evidence. The Carrier insists that there is no basis for the instant claim to be sustained.

The Carrier goes on to contend that once an arbitral panel verifies that substantial evidence supports a finding of guilty, the panel lacks authority to overturn the level of discipline assessed, even if the discipline may seem harsh, unless there is a sufficient demonstration that the discipline was arbitrary,

capricious, or an abuse of Carrier discretion. The Carrier insists that the discipline at issue was not arbitrary, capricious, or an abuse of Carrier discretion. The Carrier emphasizes that the Level 5 discipline assessed in the Grievant's case was correct and in accordance with the Carrier's UPGRADE Policy. There is no evidence of arbitrariness or capriciousness in connection with the assessment of this discipline, so there is no reason for this discipline to be overturned.

The Carrier emphasizes that it can neither condone nor forgive the Claimant's conduct. The Carrier argues that it does not need an individual who would treat his fellow employees in such a manner. The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the transcript demonstrates that there was some confusion as to what instructions were given to the Claimant. The testimony is inconclusive as to how the instructions were given, and this clouds the issue of whether the Claimant's conduct was insubordinate or a failure to follow instructions. The Organization maintains that the Claimant's actions and statements do not indicate a refusal to carry out his supervisor's instructions. The Claimant also did not demonstrate a gross disrespect for his supervisor. The Organization asserts that the Claimant did not violate Rule 1.6(3). The Organization acknowledges that Rule 1.13 more properly applies to this case than does Rule 1.6(3), but the Organization asserts that the Claimant's failure to comply with instructions was due to his misunderstanding of these instructions. The Organization argues that the Claimant did not display a refusal to carry out his

instructions. The Claimant has acknowledged, however, that he violated Rules 74.2 and 1.15.

The Organization then emphasizes that Employee Van Cannon was given the same instructions, failed to comply with the same instructions, and left work without authority, yet he was not charged with violating any rules. The Organization insists that this clearly is a case of discrimination. Given the fact that this other employee was not charged at all and that the charge of insubordination lodged against the Claimant was not proven, the Organization maintains that the ultimate penalty of dismissal represents excessive and undue punishment.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

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 was guilty of being insubordinate when he left the Carrier's property prior to quitting time after he had been specifically instructed to report back to the worksite.

The Claimant's insubordinate actions in this case had the effect of stranding his gang on the property because he was in control of their only means of leaving the area. The Claimant admitted that he did not return with the truck, stranded his gang, and left early on the date in question.

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

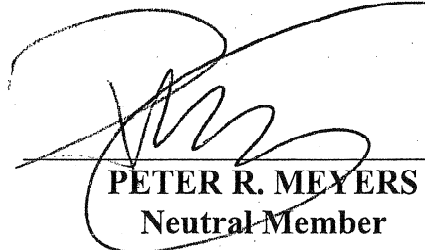
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record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case is guilty of very serious violations which included failing to follow instructions and insubordination. Given the seriousness of those violations, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: 11-9-05


CARRIER MEMBER

DATED: November 9, 2005