

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE**

and

UNION PACIFIC RAILROAD COMPANY

Case No. 281

Award No. 255

STATEMENT OF CLAIM:

It is the claim of the Brotherhood that due to the unfair hearing, the charges against Claimant M. A. Fox must be dismissed and the level 4 suspension be removed.

FINDINGS:

By letter dated July 25, 2006, the Claimant was directed to appear for a formal investigation and hearing to develop the facts and place responsibility, if any, in connection with the Claimant's alleged absence without authority from July 10 to July 20, 2006, from his position as a trackman. The investigation was conducted, as scheduled, on July 28, 2006, in the Claimant's absence. By letter dated August 4, 2006, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and was being issued a thirty-day suspension. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to suspend the Claimant. The Carrier denied the claim. The Claimant thereafter resigned from service on October 3, 2006.

The Carrier initially contends that it has met its burden of proving through substantial evidence that the Claimant was in violation of the rules. The Carrier asserts

that there is no reason to overturn what is clearly appropriate discipline, in light of the Claimant's actions.

The Carrier goes on to assert that it is well-established that once an arbitral panel has substantiated the presence of substantial evidence, it lacks the authority to overturn the level of discipline assessed, even if that discipline seems harsh. The Carrier points out that discipline may be overturned only if the panel finds that it was arbitrary, capricious, or an abuse of Carrier discretion. The Carrier insists that the discipline imposed in this matter was in accordance with the Carrier's UPGRADE Policy, and substantial evidence demonstrates that the Claimant was culpable of the charges. The Carrier therefore emphasizes that the discipline at issue was not arbitrary, capricious, or an abuse of Carrier discretion.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization contends that the Carrier violated the parties' agreement when it terminated the Claimant for being absent without authority for the period July 10 through July 20, 2006. The Organization contends that the Claimant should be reinstated with full back pay and other benefits and the discipline should be removed from the Claimant's record.

The parties being unable to resolve their dispute, 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 the Claimant was

guilty of being absent without authority for the period July 10 through July 20, 2006. The Claimant received a full and fair investigation and the Carrier showed by clear and convincing evidence that the Claimant was guilty of the charge of misconduct.

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 had a poor attendance record preceding this latest incident. The record reveals that the Claimant had previously been disciplined for being absent from work without permission in April and June of 2006. Given that previous background and the seriousness of this incident of wrongdoing, this Board cannot find that the Carrier acted arbitrarily or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: Oct. 3, 2008



CARRIER MEMBER

DATED: Oct 3, 2008