

SPECIAL BOARD OF ADJUSTMENT NO. 956

BROTHERHOOD OF MAINTENANCE	)	
OF WAY EMPLOYES	)	
	)	AWARD NO. 142
and	)	CASE NO. 142
	)	
NEW JERSEY TRANSIT RAIL	)	
OPERATIONS, INC.	)	

STATEMENT OF CLAIM:

The Organization requests that the discipline (30-day suspension) assessed to Mr. G. Quinones be expunged from his record, and that he be made whole for all financial losses suffered in connection with this discipline.

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

On Sunday, February 11, 2007, Claimant was a Foreman in charge of a gang performing the replacement and installation of a right hand switch point and stock rail. The switch point was improperly installed and as a result there was a train derailment. Subsequent investigation revealed that on Monday, February 12, 2007, the Claimant submitted an informal time sheet to Track Foreman John Calzaretta for overtime worked by the crew on Sunday, February 11, 2007. According to the Carrier, the Claimant recorded eight hours for the entire gang, including Track Supervisor Donald Berger. During its investigation, Carrier determined that Track Supervisor Berger left early, after approximately three hours on the job. By notice dated March 6, 2007, the Claimant was charged with dishonesty and failing to perform his duties as required under Carrier rules.

A hearing on the matter took place on March 26, 2007. The Claimant testified that the charges directed against him were false; that he knew Track Supervisor Berger left early on the morning of February 11, 2007 due to a family emergency; and that he submitted a sheet of paper with a question mark next to Berger's name because he was unsure how many hours Berger worked. Claimant further testified that the rest of the crew worked eight hours, as reflected on the sheet the Claimant submitted to Track Foreman Calzaretta.

Claimant's testimony is directly at odds with the account given by Track Foreman Calzaretta, who stated that he received an informal time sheet from the Claimant on Monday, February 12, 2007 which showed that the entire gang, including Track Supervisor Berger, worked eight hours. Joe Norell, Assistant Track Supervisor, was present at the time. He, too, stated that the Claimant submitted a sheet of paper which showed that Supervisor Berger and all the other members of the gang worked eight hours on February 11, 2007.

As the Organization points out, the original piece of paper submitted by the Claimant was not retained by Foreman Calzaretta because he transferred the information onto a regular form and then inputted the data into the computer. It is also true that there are discrepancies in the testimony of Norell and Calzaretta as to the appearance and format of the original sheet of paper prepared by the Claimant.

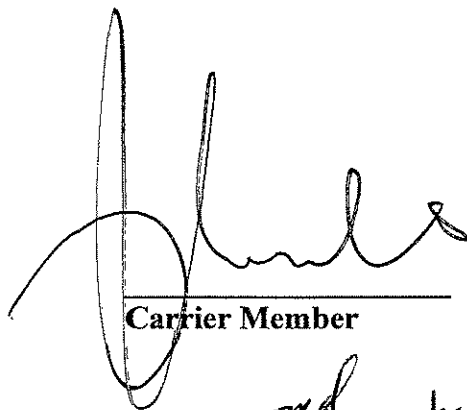
Overall, however, this case comes down to a credibility determination by the hearing officer. The Board's function is appellate in nature. We do not resolve conflicts in the testimony *de novo*. In the instant case, we must conclude that there is no proper basis for the Board to overturn the hearing officer's assessment as to credibility. Norell and Calzaretta insisted that Claimant reported eight hours worked for the entire crew. The formal time sheets reflect that fact. Moreover, the Board finds that there was no motive for either Calzaretta or Norell to fabricate a story out of whole cloth. Finally, the record showed that the formal time sheet was emailed to the Claimant for his review. Claimant addressed that issue at the investigation by stating that he does not check his email. Because he was responsible for reporting the time, however, he knew or reasonably should have known that he had to check to insure the accuracy of the reported time. Based on all these factors, there was sufficient evidence for the hearing officer to determine that the Claimant's claim of innocence was less than credible.

The remaining question concerns the propriety of the penalty. Although the Claimant contended that he was not the only one who handled the time report, it must be remembered that he was the individual who was responsible for reporting the time to the Track Foreman. Neither Track Foreman Calzaretta nor Assistant Track Supervisor Norell would have known when the switch installation project was completed or the hours worked by the crew. They took on a good faith basis the time reported by the Claimant.

The misreporting of time, whether for the direct benefit of the employee or others, is a very serious offense. We cannot say that the issuance of a thirty day suspension was unreasonable, arbitrary or capricious under the facts presented. Accordingly, we must rule to deny the claim.

AWARD

Claim denied.



Carrier Member



ANN S. KENIS
Neutral Member



Organization Member

Dated this 3rd day of June, 2008.