

SPECIAL BOARD OF ADJUSTMENT NO. 924

PARTIES:	Brotherhood of Maintenance of Way Employees	Award No. 6
TO :		Docket No. 6
DISPUTE:	Chicago and North Western Transportation Company	Award No. 7
		Docket No. 7
<u>STATEMENT OF CLAIM:</u>	"Claim of the System Committee of the Brotherhood that:	Award No. 8
		Docket No. 8

- (1) The dismissal of Trackman J. A. Bernardino for alleged 'non-performance of work on July 18, 1982' was without just and sufficient cause (Organization File C&NW-D-1043; Carrier File D-11-24-98).
- (2) The dismissal of Trackman J. F. Ortiz for allegedly 'driving Company vehicle System Number 21-2252 without a valid driver's license and non-performance of work on July 18, 1982' was without just and sufficient cause (Organization File C&NW-D-1044; Carrier File D-11-24-97).
- (3) The dismissal of Foreman John Renteria for alleged 'erroneous information recorded on daily work report and allowing unauthorized person to operate Company vehicle System Number 21-2252 on July 18, 1982' was without just and sufficient cause (Organization File C&NW-D-1045; Carrier File D-11-24-96).
- (4) The claimants listed in Parts 1, 2 and 3 hereof shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

The Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved, are respectively employees and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

The record shows that claimant John Renteria was employed as Section Foreman on Carrier's Weekend Gang in Des Moines, Iowa. Claimants J. A. Bernardino and J. F. Ortiz were employed as trackmen on that gang. The Organization points out that each of the three claimants had prior service on the former Chicago, Rock Island and Pacific Railroad, with claimant Renteria having approximately thirty years of service; claimant Ortiz twelve years; and claimant Bernardino eleven years. The Carrier states, however, that they each had about two years of service with the Chicago and North Western Transportation Company.

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On Sunday afternoon, July 18, 1982, one of Carrier's Special Agents conducted a Work Performance Audit, commencing at 3:42 P.M. Claimant Ortiz and claimant Bernardino were observed near an industry known as Bulk Service, where they arrived in vehicle System No. 21-2252, at 4:07 P.M. For a period of 88 minutes these two claimants performed no service. At about 5:35 P.M. they began their return trip to Market Street Office, from which they had departed for the Bulk Service location, with claimant Ortiz driving the truck and claimant Bernardino riding as a passenger. They arrived at the Market Street office at about 5:50 P.M., where they conducted another brief conversation. Just prior to 6:00 P.M., Ortiz and Bernardino were joined by Foreman John Renteria. The three then proceeded to Carrier's office, submitted their paper work, and departed Carrier's property.

As a result of the surveillance by the Special Agent, the claimants were instructed to attend formal investigation on the charges:

Mr. J. Renteria:

"Your responsibility for erroneous information recorded on daily work report and allowing unauthorized person to operate company vehicle System No. 21-2552 on July 18, 1982."

Mr. J. Ortiz:

"Your responsibility for driving Company Vehicle System No. 21-2252 without valid driver's license and non-performance of work on July 18, 1982."

Mr. J. Bernardino:

"Your responsibility for non-performance of work on July 18, 1982."

The investigation was conducted on August 12, 1982, and a copy of the transcript has been made a part of the record. The claimants were present throughout the investigation and were represented. The investigation was conducted in a fair and impartial manner.

From our study of the transcript of the investigation

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and the entire record before us, the Board is convinced that the claimants were simply "goofing off" on the Sunday afternoon, rather than performing work. There is substantial evidence that each claimant was guilty of the charge against him. Severe discipline was warranted; however, permanent dismissal was excessive. The time that claimants have been out of service should constitute sufficient discipline. We will award that each of the claimants be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

A W A R D

Claim sustained to the extent indicated in Findings.

O R D E R

The Carrier is directed to comply with this Award within thirty days from the date hereof.

Paul C. Carter  
Chairman, Neutral Member

John D. Crawford  
Carrier Member

H. G. Harper  
Labor Member

Date: Nov. 28, 1983