

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY - MILWAUKEE

Case No. 21

STATEMENT OF CLAIM:

Appeal of Claimant Jorge F. Mendoza's ten actual working-day
suspension.

FINDINGS:

Claimant Jorge F. Mendoza was employed by the Carrier as a laborer.

On May 9, 1994, the Carrier notified the Claimant to appear for a formal investigation into the charges that he failed to protect his assignment when he did not appear for work on April 4, 11, 12, and May 2, 1994, and also arrived to work late on April 15, 1994. On June 13, 1994, the Carrier notified the Claimant that his absence on April 28, 1994, was also being included in the above charges.

After two postponements, the hearing commenced on June 14, 1994. On June 28, 1994, the Carrier notified the Claimant that he had been found guilty of excessive absenteeism and tardiness and that he was being assessed a ten actual working-day suspension effective that date.

On July 7, 1994, the Claimant advised the Carrier of his desire to appeal his suspension under the provisions of the Agreement effective June 1, 1990, and this matter is now before this Board.

This Board has reviewed the evidence and testimony in this case, and we find


that there is sufficient evidence to support the finding that the Claimant was guilty of excessive absenteeism in April and May 1994. The record reveals that the Claimant was absent on the dates in question. He has excuses for his absences and tardiness on the one occasion, but those excuses are disputed by the other witnesses who testified. It is fundamental that determination of credibility belongs to the hearing officer and cannot be reconsidered at this level. The hearing officer apparently decided that the statements of the Claimant that he had permission to be off on the dates in question were unworthy of belief. This Board is unable to set that finding aside.

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.

In the case at hand, the Claimant's personal record indicates that he had previously received a five-day suspension for being absent without authority. In this case, the Claimant received a ten-day suspension. Given this Carrier's progressive disciplinary policy, this Board cannot find that the ten-day suspension for the second similar rule violation was unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Dated:

9/1/94