

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CANADIAN PACIFIC RAILWAY COMPANY

Case No. 47

STATEMENT OF CLAIM:

Appeal of Claimant Jeff J. Schnelle

FINDINGS:

On June 13, 1997, the Claimant, Jeff J. Schnelle, received notice from the Carrier instructing him to appear for a formal investigation into the charges that he was absent from work from September 11, 1995, until the present time allegedly under false pretense of an injury restriction sufficient to prevent him from working.

On September 28, 1997, the Carrier notified the Claimant that he had been found guilty of all charges. Consequently, he was assessed discipline of a five-day actual suspension from service.

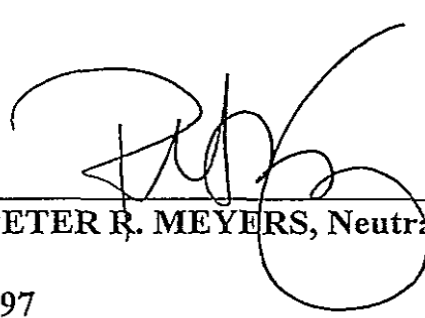
The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the extensive evidence, testimony, and surveillance reports in the record and we find that the Carrier has not met its burden of proof that the Claimant was absent under false pretenses subsequent to September 11, 1995. The Board has reviewed the surveillance reports which indicated without question that the Claimant was performing physical work on several occasions. However, there was insufficient

proof that that work fell outside of his physical restrictions. It appears from the record that the Claimant desired to go back to work at any one of a number of jobs. The Carrier did not put him back to work. He did help out a friend on several dates in April and May of 1997. However, the fact that he did that work does not necessarily mean that he was absent under false pretense. Therefore, the claim must be sustained.

AWARD

Claim sustained. The suspension shall be removed from the Claimant's record and he shall be made whole.



PETER R. MEYERS, Neutral Member

Dated: December 16, 1997