

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

Case No. 49

STATEMENT OF CLAIM:

Appeal of Claimant Curt A. Otero

FINDINGS:

On March 3, 1998, the Claimant was notified by the Carrier to appear for a formal investigation into the charges of alleged dishonesty when he appeared as a witness at an investigation/hearing conducted on February 27, 1998, at Portage, Wisconsin and the Claimant allegedly failed to report an incident that occurred on February 12, 1998, involving his Track Bulletin Form B while working as a flagman near Wadsworth, Illinois. The investigation was held on April 30, 1998, and it was determined that the Claimant was guilty as charged. Consequently, the Claimant was assessed a ten (10) day suspension, forfeiture of his assistant foreman seniority, he was restricted from working as a flagman, and he was restricted to holding a laborer position only.

The Organization filed the instant claim on behalf of the Claimant under the provisions of the Agreement.

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

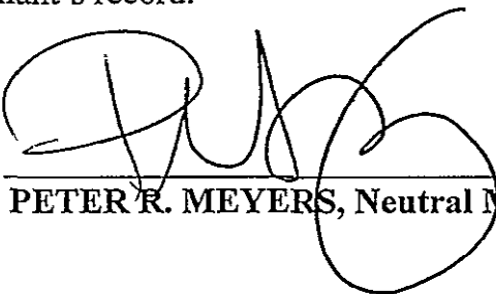
This Board has reviewed the extensive evidence and testimony in this case and we

find that the Carrier has failed to meet its burden of proof that the Claimant engaged in dishonesty when he was a witness at an investigation held on February 27, 1998, and the Carrier failed to prove with sufficient evidence that the Claimant failed to report an incident that occurred on February 12, 1998, when he was working as a flagman.

In all discipline cases, the Carrier bears the burden of proof to show that the Claimant violated the rules and thereby subjected himself to discipline. In this case, although the record is somewhat confusing, it appears that the Carrier failed to present the preponderance of evidence needed to support its burden of proof. Therefore, the claim must be sustained.

AWARD

Claim sustained. The ten (10) day suspension shall be removed from the Claimant's record and he shall be made whole. The other restrictions shall also be removed from the Claimant's record.



PETER R. MEYERS, Neutral Member

Dated: July 27, 1998