

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 174

Award No. 161

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The five-day suspension and disqualification as a track foreman of K. K. Carter for alleged misuse of Company time and falsification of Company records is without just and sufficient cause and excessive (Organization File 3KB-4509D; Carrier File 81-89-145).
2. The five-day suspension and disqualification as a track foreman of Mr. R. R. Wallingford for alleged misuse of Company time and falsification of Company records is without just and sufficient cause and excessive (Organization File 3KB-4510D; Carrier File 81-89-144).
3. The five-day suspension assessed Mr. J. M. Campbell for alleged misuse of Company time was without just and sufficient cause, capricious and unwarranted (Organization File 3KB-4511D; Carrier File 81-89-143).
4. Claimants K. K. Carter and R. R. Wallingford shall now have their seniority restored and along with Claimant J. M. Campbell shall be compensated for all wage loss suffered and have their records cleared of the incident.

FINDINGS:

Claimants Carter and Wallingford were employed by the Carrier as foremen at Clinton, Iowa; Claimant Campbell was employed by the Carrier as an assistant foreman at the same location.

On September 6, 1989, the Carrier notified Claimants Carter, Wallingford, and Campbell to appear for a formal investigation in

connection with their misuse of Company time on August 31, 1989. Claimants Carter and Wallingford were also charged with falsifying work reports.

A hearing was held on September 8, 1989. On September 15, 1989, the Claimants were issued five-day suspensions effective September 16, 1989. Claimants Carter and Wallingford were also disqualified as foremen. The Organization thereafter filed a claim on the Claimants' behalf seeking revocation of the discipline and compensation for all time lost, as well as the revocation of the disqualifications of Claimants Carter and Wallingford. The Carrier denied the claim.

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

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimants were guilty of misuse of Company time and falsification of work reports for August 31, 1989. The record reveals that Claimant Carter admitted that he misused Carrier time on that date. He also seems to admit in his testimony that he falsified a work report.

Claimant Wallingford admits that he misused Company time on August 31 and seems to also admit that he falsified a work report on that date.

There is no question that the Claimants were guilty of the offenses and subjected themselves to discipline.

Once this Board has determined that there is sufficient

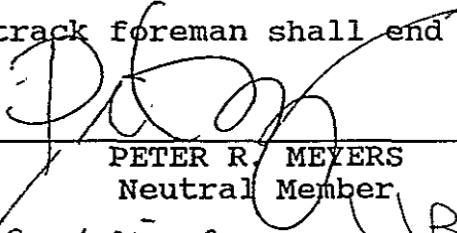
evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In the case at hand, the Claimants both had lengthy service with the Company. Claimant Carter began his service with the Company in 1955, and Claimant Wallingford began his service with the Company in 1974. Given that lengthy service and the previous relatively good records of the Claimants, this Board must find that although the five-day suspension was appropriate, the permanent disqualification as a track foreman penalty was excessive and without just and sufficient cause.

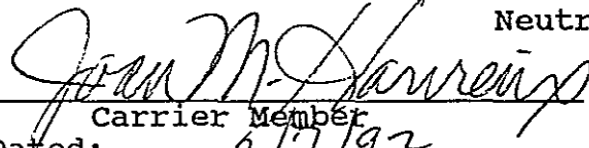
Therefore, this Board will sustain the claim in part. The five-day suspensions of the Claimants were appropriate, and they shall remain of record. The disqualification of Claimant Carter from the position of track foreman shall end as of May 1, 1992. Claimant Wallingford's personal record shall reflect removal of the disqualification effective May 1, 1992, since this Board recognizes that he has since been removed from the seniority roster. That penalty for both Claimants is a sufficient penalty, and anything more was without just cause.

AWARD:

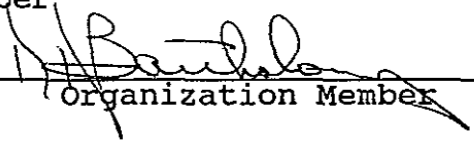
Claim sustained in part. The five-day suspensions of the Claimants shall remain, but the permanent disqualification for Claimant Carter as track foreman shall end on May 1, 1992.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: 5/17/92