

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

**UNION PACIFIC RAILROAD COMPANY
(former Chicago and North Western Transportation Co.)**

Case No. 248

Award No. 225

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

- (1) The dismissal of B&B Carpenter S. G. Quintero for violation of Union Pacific Rule 1.15 for allegedly being absent without authority on March 26, 1997, is unjust, unwarranted, and excessive. (Organization File 9KB-6317D; Carrier File 1082145D.)
- (2) Mr. S. G. Quintero shall be reinstated with all rights unimpaired, be compensated all lost time, be made whole for all losses, and have the discipline removed from his personnel record.

FINDINGS:

Claimant S. G. Quintero was employed by the Carrier as a B&B carpenter at the time of this claim.

On March 27, 1997, the Carrier informed the Claimant to appear for a formal investigation into the charges that on March 26, 1997, he was allegedly absent without authority in possible violation of Rule 1.15.

After one postponement, the hearing took place on April 8, 1997. On April 14, 1997, the Carrier notified the Claimant that he had been found guilty of all charges and that since this was his third violation of the same rule within a thirty-six month period, he was assessed a Level 5 – Permanent Dismissal.

The Organization filed a claim on behalf of the Claimant arguing that the Claimant contacted the Carrier on March 26, 1997, and left a voice mail message for his foreman that he would not be at work that day and requested that his foreman call him back so that he could explain the reason for his absence. The Organization maintains that the Carrier acknowledged that no one returned the Claimant's call. The Organization argues that a Mr. Bucklin testified that the normal procedure to report off work is for the employee to call his/her foreman, which is what the Claimant did. The Organization contends that Mr. Bucklin stated that he received the Claimant's information on March 26, but neither he nor the foreman returned the Claimant's call. The Organization maintains that the Claimant suffered from severe back pain on the date in question and was unable to perform his normal duties, which was a valid reason to be absent. The Organization argues that the Claimant did not walk away from his duties or deliberately defy the supervisor's instructions. The Organization argues that Mr. Bucklin simply wanted to dismiss the Claimant because the message was not left on his voice mail. The Organization also argues that the Carrier's written instructions concerning reporting absences includes the production of written documentation of the reason for an absence within twenty-four hours, but the Claimant was not afforded an opportunity to do so because he had been prejudged by Mr. Bucklin. The Organization contends that the Claimant was not assessed any level of discipline prior to his dismissal and argues that the Claimant's dismissal was not progressive in nature. The Organization maintains that the Carrier's discipline in this case does not reflect the objective of the upgrade policy to

rehabilitate, correct, and guide an employee.

The Carrier denied the claim. The Carrier argues that the Claimant had previously been found guilty of violating Rule 1.15 on October 21, 1996, and November 6, 1996, and that the violation of the same rule in this case on March 26, 1997, was the third infraction within a thirty-six month period warranting dismissal. The Carrier argues that as a result of the two previous incidents, he was involved in corrective action plans in which he was specifically instructed to contact Mr. Bucklin directly if he needed authority to be off of work. The Carrier argues that the Claimant did not have authority to be absent on the date in question and that he was familiar with the rules and regulations that pertain to protecting his assigned job. The Carrier maintains that a voice mail message left on his foreman's answering service did not comply with the written instructions given to the Claimant since the Claimant acknowledged that he had previously been instructed to call Mr. Bucklin for permission to be absent from work. The Carrier argues that the Claimant acknowledged that he made no attempt to contact Mr. Bucklin even though he had been provided with Mr. Bucklin's office, pager, home, and cell phone numbers. The Carrier also argues that the Claimant never produced any corroboration regarding his alleged medical condition on the date in question, either when he did report to work or at the investigation. The Carrier contends that the Claimant had ample opportunity to produce written documentation, but failed to do so. The Carrier also argues that the Claimant's story regarding an alleged injury presents another rule violation since that injury was not properly reported. The Carrier argues that it has

attempted to work with the Claimant to correct his attendance problems, but he made no improvement. The Carrier maintains that its upgrade policy was followed and that the Claimant was properly issued a Level 5 discipline as a result of his repeated violation of the attendance rules.

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 to support the Carrier's finding that the Claimant was guilty of violating Rule 1.15 for the third time within less than six months. At the hearing, the Claimant admitted that he was scheduled to work on March 26, 1997, and that he did not come to work and did not have permission to be off work that day. Although he contends that he left a voice mail message for his foreman, the facts reveal that the Claimant had the responsibility of getting the permission of his foreman before he could miss work. He did not do that in this case.

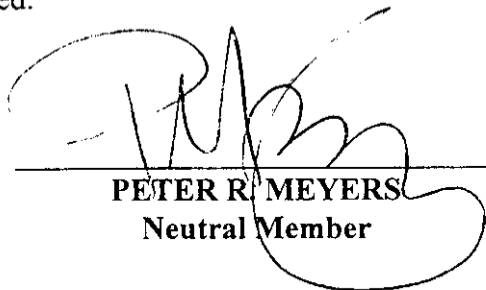
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary,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

The record reveals that this Claimant was a short-term employee with less than three years of service. Moreover, the upgrade discipline policy gives the Carrier the right to dismiss an employee who has committed the same rule infraction three times within a thirty-six month period. This Claimant violated this rule three times in less than six

months. Given the previous disciplinary background of this Claimant and his short term of service, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 4-3-01



CARRIER MEMBER

DATED: March 20, 2001