

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. 249

Award No. 224

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

- (1) The dismissal of Trackman Jerome Brunns for his alleged falsification of Union Pacific Post-Offer Pre-Placement Medical History dated April 24, 1998, was without just and sufficient cause and in violation of the Agreement. (Organization File 4WJ-7255D; Carrier File 1189055D.)
- (2) Trackman Jerome Brunns shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered, and have his record cleared of this incident.

FINDINGS:

Claimant Jerome Brunns was employed by the Carrier as a trackman at the time of this claim.

On January 11, 1999, the Carrier informed the Claimant to appear for a formal investigation into the charges that he falsified the Carrier's Post-Offer Pre-Placement Medical History form dated April 24, 1998. The Carrier alleged that the Claimant violated Carrier Rules 1.2.7, 1.6(4), and Rule 4(b) of the collective bargaining agreement between the Organization and the Chicago and Northwestern Transportation Company. The Claimant was to be withheld from service pending the outcome of the investigation.

After one postponement, the hearing took place on February 3, 1999. On February 10, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed a Level 5 discipline and dismissed from the service of the Carrier.

The Organization filed a claim on behalf of the Claimant, arguing that Carrier employees testified that on November 10, 1998, they became aware that the Claimant had experienced previous back problems prior to being hired by the Carrier and that the Claimant excluded that information from his Post-Offer Pre-Employment Medical History form (Form 16900) dated April 24, 1998. The Organization contends that, as a result of that information, the Carrier conducted the hearing well over the ten-day time limit from the time that the Carrier first became aware of the information of the alleged violation in this case. The Organization maintains that the Carrier committed a procedural default in failing to provide the Claimant with a timely hearing required under Rule 19 and any discipline assessed as a result of the improper hearing must not stand. The Organization also argues that the Carrier's contention that the Claimant also excluded information on Form 16900 pertaining to his eye is far fetching as the removal of a foreign body from his eye did not leave the Claimant with any eye or vision problems. The Organization also contends that the Claimant's back condition was diagnosed as a spur, which is common condition and not necessarily associated with an injury. The Organization argues that there was no intentional withholding of information or premeditated purpose on the part of the Claimant when he did not include information that the Carrier required on Form 16900. The Organization argues that the Claimant only

became aware of what information the Carrier required on the form after he had been questioned during the investigation.

The Carrier denied the claim, contending that the hearing was not scheduled within the usual time limit since its investigation of the matter was ongoing. In addition, the Carrier argues that the Carrier employees who allegedly possessed the knowledge of the Claimant's back pain were not engineering department officers. The Carrier maintains that it is the engineering department officer who must be made aware of the information concerning an alleged offense in order for the ten calendar-day time period to take effect. The Carrier argues that the Claimant did indeed falsify Form 16900 on the date in question by not including pertinent information relating to his health; that is, the Claimant not only omitted information relating to his back problems, but vision problems as well. In addition, the Carrier argues that it received documentation of the Claimant's falsification of Form 16900 on or about January 11, 1999, and that the investigation notice was sent out that same day. Therefore, the Carrier maintains that the hearing was held within the time limit required, and the evidence presented at the hearing supports the charges that the Claimant falsified his medical history when applying for work. The Carrier argues that the Claimant concurred that he indeed failed to properly fill out Form 16900 and there should be no argument that he was dishonest on his application. The Carrier contends that the work of a track laborer entails strenuous physical activity and it must insist on complete openness and truthfulness from employees on their post-medical conditions. The Carrier maintains that such information from the Claimant was crucial to an objective evaluation of his ability to function as a track laborer. The Carrier argues

that the discipline assessed the Claimant is appropriate and in accordance with the upgrade policy.

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

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The rule in question, Rule 19, states the following:

The hearing will be held within ten (10) calendar days of the alleged offense or within ten (10) calendar days of the date information concerning the alleged offense reached the designated Engineering Department officer.

Although the record demonstrates that a track supervisor and a senior specialist claims operations employee both possessed the information earlier, it is clear that the Engineering Department officer did not review the documents supporting the violation until January 11, 1999. At that time, it was determined by the Engineering Department that there was sufficient evidence to proceed with a hearing and the investigation notice was sent out the same day. The investigation was held seven days later on January 18, 1999. Consequently, this Board finds that the Carrier complied with Rule 19 by scheduling the hearing within ten calendar days of the date that the information concerning the alleged offense reached the designated Engineering Department officer.

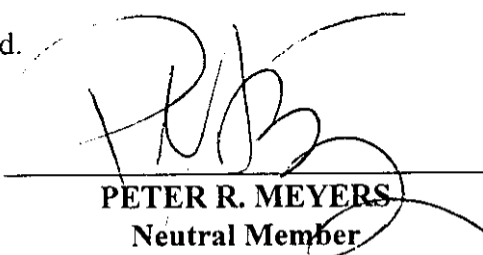
With respect to the substantive issue, the record reveals that the Claimant acknowledged that he had previous back problems prior to working with the Carrier and that he should have checked the appropriate boxes as "yes" instead of "no" when he applied for employment. Consequently, it is clear from this record that the Claimant was not honest on his application for employment because he did not indicate that he had pre-existing medical problems.

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.

It is fundamental that dishonesty is a dismissible offense in the rail industry. The Carrier's upgrade discipline policy identifies dishonesty as a Level 5 violation. Given the seriousness of the Claimant's wrongdoing, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated his employment after it discovered the Claimant had lied on his application for 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