

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. 253

Award No. 230

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

- (1) The dismissal of Foreman J. R. Wyse for alleged violation of Rule 1.6 of the Union Pacific Rules, effective April 10, 1994, for submitting allegedly dishonest and fraudulent payrolls for work not performed during February and March 1999, specifically including but not limited to, February 6, 7, 13, 14, 15, 20, 21, 27, 28, March 6, 7, 13, and 14, 1999, was arbitrary, capricious, based upon unproven charges and in violation of the Agreement (Organization File 9KB-6519D; Carrier File 1200106).
- (2) As a consequence of the violation in Part (1) above, the Claimant shall be reinstated to service with seniority and all rights unimpaired, compensated for all lost time, made whole for losses as a direct result of the wrongful dismissal and have his record cleared of any reference to the incident.

FINDINGS:

Claimant J. R. Wyse was employed by the Carrier as a track foreman at the time of this claim.

On March 26, 1999, the Carrier notified the Claimant to appear for a formal investigation to develop the facts and place responsibility, if any, in regards to the charge

that, while assigned as a foreman, the Claimant allegedly was dishonest and fraudulent when he entered payrolls for work that he did not perform and was not entitled to during February and March of 1999, specifically, but not limited to, February 6, 7, 13, 14, 15, 20, 21, 27, 28, March 6, 7, 13, and 14, 1999. The Carrier charged the Claimant with having allegedly violated Rule 1.6. The Claimant was to be withheld from the service of the Carrier pending the outcome of the investigation.

After several postponements, the hearing took place on May 3, 1999. On May 13, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed a Level 5 dismissal discipline under the UPGRADE discipline policy.

The Organization filed a claim on behalf of the Claimant. The Organization argues that the Claimant has over twenty-nine years of service with the Carrier and an exceptional work history, rendering the discipline at hand as excessive. The Organization maintains that the notice of investigation did not properly list any alleged rule violation. In addition, the Organization argues that the Carrier violated Rule 19 when it failed to conduct the hearing within ten days of the alleged offense or the information reaching the proper Carrier officer. The Organization maintains that the conducting officer discussed the investigation with Carrier witnesses prior to the investigation thereby prejudging the Claimant and failing to afford the Claimant a fair and impartial hearing. The Organization asserts that the Carrier failed to meet its burden of proof as there was absolutely no testimony showing that the Claimant failed to render service for the Carrier

on the dates in question. The Organization contends that it was shown at the hearing that the Claimant was on Carrier property on two of the dates in question and was also logged onto the Carrier's computer system. The Organization maintains that many employees render service for the Carrier without being observed by co-workers and managers. In addition, the Organization argues that all of the Claimant's payrolls were approved within three working days of the close of the pay period and reviews were completed without questioning the Claimant. The Organization contends that discipline is to be remedial rather than punitive and the manner in which the Claimant was assessed a Level 5 discipline is contrary to the stated introduction of the Carrier's UPGRADE policy. In addition, the Organization states that the Claimant was offered a leniency reinstatement by the Carrier on the condition that the instant claim be withdrawn, but the Claimant refused to do so.

The Carrier denied the claim. The Carrier argues that there is no requirement that a rule number must be referenced in the notice of investigation and that the notice was proper as it informed the Claimant of the infraction that was being investigated. The Carrier also contends that the investigation was scheduled within ten days of the time that Mr. Sturm, the proper Carrier officer, was informed of the offense. The Carrier further argues that there was no prejudgment in the case at hand and the conducting officer performed in his capacity to ascertain all of the facts of the case. The Carrier also argues that no one saw the Claimant on Carrier property on the dates in question and that the

Claimant's testimony lacked detail and changed several times during the investigation making it difficult to believe him. The Carrier argues that the transcript contains many examples that the Claimant had falsified his payroll time. In addition, the Carrier argues that it did not routinely approve the Claimant's payroll for February and March of 1999, but that it does have the right to audit payrolls and did so in the Claimant's case when several irregularities were noted. The Carrier states that it offered to reinstate the Claimant to service subject to several terms and conditions, but the Claimant refused.

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.

With respect to the substantive issues, 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 Claimant was guilty of submitting dishonest and fraudulent payrolls for work that he did not perform on several occasions during the months of February and March of 1999. The record is clear that the Claimant did not work for all of the time for which he submitted pay requests. That action on the part of the Claimant constituted dishonesty and theft and subjected the Claimant to severe disciplinary action.

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

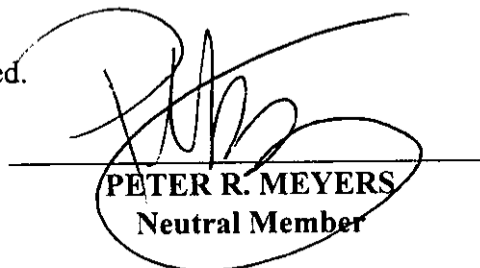
to have been unreasonable, arbitrary, or capricious.

The offense of which the Claimant was properly found guilty was one that often leads to dismissal. This Board recognizes that this Claimant had a long seniority with the Carrier. However, theft and dishonesty are the types of offenses which often allow Carriers to move to the final step of discipline and not give as much weight to the lengthy seniority of a long-term employee. This is just such a case.

Given the seriousness of the wrongdoing in this matter, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.


PETER R. MEYERS
Neutral Member


ORGANIZATION MEMBER

DATED: 4-04-01


CARRIER MEMBER

DATED: 04-11-01