

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER CHICAGO & NORTH WESTERN TRANSPORTATION
COMPANY)**

Case No. 264

Award No. 240

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

1. The dismissal of Trackman H.W. Janvrin for his alleged dishonesty in claiming travel allowance for travel he did not make during the weekend of October 10, 11, and 12, 2003 was without just and sufficient cause, in violation of the Agreement and based on unproven charges (System File 2RM-9492D/1389549D).
2. As a consequence of the violations referred to in Part (1) above, Trackman H.W. Janvrin shall ' . . . be returned to active service with all seniority rights restored, compensated for all lost time and wages, medical benefits he was deprived of, vacation rights restored, credit for months of service with the Railroad Retirement Board, any differential in pension benefits if Claimant ends up with a reduced retirement compensation due to not being afforded an opportunity to get 360 months of service and any other benefit not herein mentioned that any active employee would receive while working,' and he shall have his record cleared of the incident."

FINDINGS:

At the time of the events leading up to this claim, the Claimant was assigned to work for the Carrier as a Trackman on Gang 2984.

By letter dated October 23, 2003, the Claimant was notified to appear for a formal investigation and hearing to develop the facts and place responsibility, if

any, in connection with the Claimant's alleged dishonesty when he claimed the weekend travel allowance reimbursement for travel that the Claimant allegedly did not make. After a postponement, the hearing was conducted on November 19, 2003. By letter dated November 28, 2003, the Claimant was notified that as a result of the hearing, he had been found guilty as charged, and he was being assessed Level 5 discipline, dismissal from the Carrier's service. The Organization filed a claim challenging the Carrier's decision, and the Carrier denied the claim.

The Carrier initially contends that the Claimant was afforded all elements of due process in accordance with the Agreement. The Claimant received adequate notice of his investigation, was allowed ample representation, and was able to present his own witnesses, as well as cross-examine all of the Carrier's witnesses who were present at the investigation. The Carrier points out that the Organization's procedural objections are based on purported inaccurate charges in the notice of investigation and the Carrier's alleged failure to charge the Claimant within ten days of knowing about his rule violations. The Carrier insists that these procedural objections are not persuasive. The Carrier points out that the notice of investigation correctly reflects the Claimant's travel claim. If the Carrier erred in describing the distance that the Claimant fraudulently claimed, this error does not go to the heart of the charges and therefore would not require the overturning of the discipline imposed in this case.

As for the argument that the investigation was held outside ten days of the

date that the Carrier knew about the Claimant's rule violation, the Carrier insists that this objection also must fail because the investigation initially was scheduled for October 29, 2003, seven days from the date, October 22, 2003, when the Carrier determined that there was reasonable cause to charge the Claimant. The Carrier maintains that it could not have charged the Claimant without first determining whether his actions provided enough reasonable cause to bring charges. This determination was made on October 22, 2003, after the conclusion of an investigation into the matter. Moreover, the Carrier points out that Rule 19 allows the Carrier to start tolling the time limits for charging an employee from the date of notice. The Carrier argues that it correctly charged the Claimant, and these charges were brought with Rule 19(A)'s ten-day limit.

The Carrier goes on to assert that there is no basis for the Organization's argument that the transcript does not support the discipline imposed upon the Claimant. The Carrier emphasizes that the Claimant admitted that he never made the claimed trip to Utah, and he also admitted to claiming mileage for the trip that he did not take. The Carrier's investigators also observed the Claimant in Webster, Iowa, on October 10, 2003, when he was supposed to be on his way to Utah. The Carrier points out that the Claimant never produced any evidence of his trip to Utah, and he never attempted to refute the Carrier's evidence that he did not travel to Utah. The Carrier maintains that it is well established on the property that an admission of guilt provides enough evidence to support any charges against the employee. The Claimant's admissions in this case, when combined with the

substantial unchallenged evidence of his dishonesty, provide more than enough evidence to meet the Carrier's burden of proof.

The Carrier goes on to contend that once an arbitral panel verifies that substantial evidence supports a finding of guilty, the panel lacks authority to overturn the level of discipline assessed, even if the discipline may seem harsh, unless there is a sufficient demonstration that the discipline was arbitrary, capricious, or an abuse of Carrier discretion. The Carrier insists that the discipline at issue was not arbitrary, capricious, or an abuse of Carrier discretion. The Carrier emphasizes that the Level 5 discipline assessed in the Grievant's case was correct and in accordance with the Carrier's UPGRADE Policy. The Carrier asserts that dishonesty never is condoned on the property, especially where the dishonest act infringes on the Carrier's resources. The Carrier further argues that the Board consistently has upheld dismissal in similar cases involving dishonesty. There is no evidence of arbitrariness or capriciousness in connection with the assessment of discipline in the instant case, so there is no reason for this discipline to be overturned.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that Rule 19(A) specifies that the hearing shall be held within ten calendar days of the offense or the date on which the Carrier has knowledge of the occurrence to be investigated. The Organization emphasizes that this language is mandatory, so the Carrier had no choice but to

hold the hearing within ten days of the alleged offense or when it had knowledge of the occurrence. The Organization asserts that the record shows that the Carrier had reviewed the investigator's report and video and had determined to charge the Claimant on or prior to October 16, 2003. The Carrier therefore failed to comply with Rule 19(A) when it scheduled the investigation for October 29, 2003, outside the Rule's ten-day time limit.

The Organization points out that under prior Board Awards, the Carrier bears the burden of showing extenuating circumstances, if any, once the Organization has made a *prima facie* showing that this time limit has been violated. The Organization asserts that it is disingenuous for the Carrier to argue that it did not determine to remove the Claimant until after the investigator completed his interviews on October 22d. The Organization points out that Hanner testified that he was instructed to remove the Claimant from service around October 14 or 15. Moreover, the Carrier had knowledge of the incidents at issue when Ring reviewed the investigator's report and video during the week of October 13. The Organization argues that on this record, it is evident that the Carrier violated the time limit set forth in Rule 19(A).

The Organization goes on to contend that the Carrier failed to meet its burden of proof with regard to the charge against the Claimant. The record demonstrates that the investigator did not see the Claimant after 5:58 p.m. on Friday, October 10, 2003. The Organization insists that the Carrier simply is speculating as to whether the Claimant returned to his residence that weekend or

not. The Organization maintains that speculation is not proof, and the Carrier has failed to meet its burden of proof in this case.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The parties being unable to resolve their dispute, 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 record reveals that the Carrier did not conclude its investigation into the charges against the Claimant until October 22, 2003. The investigation was scheduled for October 29, 2003, which is less than the ten-day limit set forth in Rule 19(a).

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 dishonesty for filing a claim for a travel allowance for travel that he did not make over the weekend of October 10, 2003. A thorough review of the lengthy transcript in this case makes it clear that the Claimant did admit that he did not make the claimed trip to Utah over that weekend and he also admitted that he claimed mileage from the Carrier for that trip that he did not take. There is further evidence from the investigators who observed the Claimant in Iowa on October 10, 2003, when he claimed he was on his way to Utah. The Claimant was requested on numerous occasions throughout the hearing to provide any evidence that he was in Utah on the dates for which he claimed travel expense

and he was unable to do so.

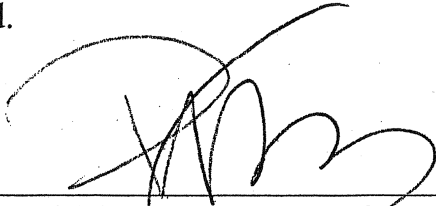
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

This Board recognizes that the Claimant has twenty-nine years of seniority. We also recognize that he has no other discipline on his record. However, the offense of which the Claimant was clearly proven guilty amounts to dishonesty and theft. This Board has stated on numerous occasions that theft is theft and that a single incidence of that serious offense can lead to a dismissal, even after numerous years with the Carrier.

Given the seriousness of this offense, coupled with the evasive and dishonest answers that the Claimant gave during the course of the hearing, this Board cannot find that the Carrier's action in terminating the Claimant was without just cause or unreasonable, arbitrary, or capricious. Therefore the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 11-9-05



CARRIER MEMBER

DATED: November 9, 2005