

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE**

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY)**

Case No. 283

Award No. 257

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

1. The dismissal of Machine Operator Terry L. LaCaille for alleged violation of General Code Operating Rule 1.6 in connection with falsifying his payroll on October 18, 19, 20, 23, 24, 25 and 26, 2006 is unjust, unwarranted, based on unproven charges and in violation of the Agreement (System File 2RM-9770D/1466994 CNW).
2. As a consequence of the violation outlined in Part 1 above, the charges against Mr. LaCaille should be removed and he should be returned to service with all rights and benefits restored and be compensated for all time lost."

FINDINGS:

By notice dated November 8, 2006, the Claimant was directed to attend a formal hearing and investigation to develop the facts and place responsibility, if any, in connection with allegations that the Claimant allegedly had falsified his payroll on October 18, 19, 20, 23, 24, 25 and 26, 2006. The investigation was conducted, after a postponement, on November 28, 2006. By letter dated December 7, 2006, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge him. The Carrier

denied the claim.

The Carrier initially contends that it has met its burden of proving, through substantial evidence, that the Claimant acted in violation of the rules. The Carrier asserts that the Claimant should not have been paid overtime on the cited dates because no overtime service was performed. The Carrier argues that the Claimant admitted that he was personally responsible for his own pay, even if someone else put in the Claimant's time for him. Citing a prior Board Award, the Carrier emphasizes that where there is an admission of guilt, there is no need for further proof.

The Carrier points out that the Organization did not contend that there were any procedural violations. Accordingly, the Carrier argues that this Board should find that no procedural errors occurred during the handling of this claim, and the Claimant's dismissal should not be disturbed for any procedural allegation.

The Carrier then maintains that it is well established that once the arbitral panel has substantiated the presence of substantial evidence in the record, it has no authority to overturn the level of discipline imposed. The Carrier emphasizes that even if the discipline seems harsh, the Board cannot overturn it unless the discipline was arbitrary, capricious, or an abuse of Carrier discretion.

The Carrier insists that it proved the Claimant's guilt through substantial evidence. The Claimant did not work the hours that were submitted for his payroll on the cited dates, and the Claimant should not have received overtime compensation for these dates. The Claimant admittedly was responsible for his own pay, and it was incumbent upon the Claimant to verify the time that had been reported for him. The Carrier emphasizes that

the Claimant failed to verify the time submitted, and he was compensated for time that he did not work. The Carrier points out, in addition, that the Claimant was responsible for production reporting, so he would have been aware of the hours being reported.

The Carrier argues that the Claimant committed a very serious rule violation that warrants dismissal. The Carrier asserts that Boards routinely have upheld dismissal for dishonesty and theft. The Carrier insists that because of the number of days involved, there is no support for the Organization's theory of innocence. It is well established that theft from an employer is a dismissible offense because it destroys the trust that must exist between an employee and his employer.

The Carrier maintains that it cannot allow employees, like the Claimant, to remain in service who have demonstrated an inability to follow the rules. The Carrier insists that the discipline assessed was not arbitrary, capricious, or an abuse of discretion.

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

The Organization initially contends that because the charged offense implies an element of moral turpitude, if not criminal liability, the Carrier must support this accusation with clear and convincing evidence of misconduct. The Organization asserts that the Carrier has failed to present clear and convincing evidence that the Claimant falsified his payroll, and it failed to prove any wrongdoing on the Claimant's part.

The Organization argues that, at most, the Claimant failed to check the report for his payroll records that another individual submitted. The Organization points out, however, that the Claimant was not charged with failing to verify the accuracy of the time

entered by the other employee, but instead with falsifying his own time.

The Organization emphasizes the Claimant's testimony that he typically worked through lunch and worked some overtime due to the inability to get track authority from the dispatcher to move equipment. The Organization asserts that this overtime was reflected in the daily reports submitted by the Claimant's co-worker to management. The Organization contends that the Carrier never questioned the Claimant or his co-worker about the overtime. Instead, the Carrier denied the overtime and charged the Claimant. Moreover, there is no evidence that the Claimant's co-worker was charged, or even questioned, in connection with this matter.

The Organization insists that a review of the record reveals that the Carrier failed to prove the charges leveled against the Claimant. Accordingly, no discipline is warranted, and the Claimant is entitled to the full remedy requested.

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. This Board finds that the Claimant's due process rights were protected throughout the hearing.

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 falsifying his payroll on seven different dates in October of 2006. Although it

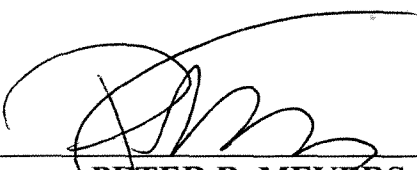
was the responsibility of other employees to prepare some of the paperwork and report the overtime, the Claimant admitted at the hearing that he is personally responsible for his own pay, "even if someone else puts it in for you."

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.

Falsification of payroll is not unlike theft from the company. It is fundamental that theft is an offense that can lead to termination even on the first occasion. Given the seriousness of this offense and the Claimant's admission that he was personally responsible for his own pay, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: Sept. 9, 2009



CARRIER MEMBER

DATED: Sept 9, 2009