

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 31
Docket No. 45

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The dismissal of B&B Carpenter Maurice Shaw was without just and sufficient cause. (Organization File 9D-4391; Carrier File 81-84-144-D).
- (2) B&B Carpenter Shaw shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

The claimant herein is the same as involved in Awards Nos. 29 and 30. Awards Nos. 29 and 30 resulted from two investigations that claimant participated in as a principal on September 20, 1983. The present case involves charge against claimant, with investigation originally scheduled for 1:00 P.M., December 28, 1983:

"To determine your responsibility for your failure to provide factual information on the investigations held on September 20, 1983."

Because of claimant not being available on December 28, 1983, the investigation was, at the request of representative of the organization, postponed to 1:00 P.M., January 5, 1984.

In the investigation conducted on January 5, 1984, claimant contended that he did not receive the original notice scheduling the investigation for December 28, 1983, or the letter postponing it to January 5, 1984. It was established that both letters were sent certified mail to claimant's address last registered with the Carrier. The union representative did receive a copy of the notice of investigation through the mail. The union representative did contend, however, that the charge was not precise. We cannot agree that the charge was not precise. Claimant attended two investigations

on September 20, 1983, as a result of which he was disciplined in each case. Certainly he knew what the investigations of September 20, 1983, were about. The charge in the present case was claimant's alleged "failure to provide factual information on the investigations held on September 20, 1983." The charge was sufficiently precise to enable claimant and his representative to prepare a defense. It met the requirements of the Agreement. It is noted, however, that at the beginning of the investigation on January 5, 1984, the conducting officer offered further postponement if claimant or his representative so desired. They elected to proceed, thereby waiving any contention regarding proper notice.

In the investigation of September 20, 1983, in which claimant was charged with unauthorized absences from his assignment on specified dates, claimant contended that he was sick on August 4, 1983, and the other dates involved. He testified in the second investigation that he left the property early on September 7, 1983, and failed to protect his assignment on September 8, 1983, because of being erroneously arrested by the Chicago Police officers in a case of mistaken identity, and that no charge was filed against him by the Police.

In the investigation of January 5, 1984, it was developed and supported by Police records, that claimant was at Chicago's O'Hare Field renting a car from Budget-Rent-A-Car on August 4, 1983, and not ill and under a doctor's care, as previously claimed. It was also brought out that claimant's arrest on September 7, 1983, was because of his failure to honor the car rental contract by not returning the vehicle. It was clearly established that claimant's arrest on September 7, 1983, was not a case of mistaken identity, as previously claimed. The Police records also indicate that claimant pleaded guilty to the charge which brought about his arrest.

In the investigation of January 5, 1984, claimant declined to give a statement of any kind and refused to answer questions. An employee may not properly refuse to answer questions in an investigation. If he does so, it is at his peril, and the only proper inference that may be drawn is that if the questions were answered such answers would be to the detriment of the employee.

There was substantial evidence in the investigation of January 5, 1984, in support of the charge against claimant, and sustained a finding that claimant had given false information in the prior hearings conducted on September 20, 1983. The penalty of dismissal was not arbitrary, capricious or excessive. The claim will be denied.

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Claim denied.

Paul C. Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. B. Harper
Labor Member

Dated: April 16, 1985.