

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 218

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

1. The dismissal of Metropolitan Division B&B employe J.A. Merola, Jr., for alleged "... dishonesty in connection with your falsification of your personal Qualifications Records when you falsely asserted yourself to be a qualified B&B Foreman and you submitted counterfeit documents in support of the false qualification assertion to your Supervisors and to the M/W Assignment Office on or about December 12, 20001 [sic], and January 3, 2002....", was without just and sufficient cause (System File NEC-BMWE-SD-4184D).
2. The Claimant shall be returned to the Carrier's service, his record shall be cleared of the charges leveled against him and he shall be paid for all wage loss suffered."

FINDINGS:

At the time of the events leading up to this claim, the Claimant was employed by the Carrier as a B&B employee in its Metropolitan Division.

By letter dated January 30, 2002, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant allegedly committed acts of dishonesty in connection with his falsification of his personal Qualification Records by falsely asserting himself to be a qualified B&B Foreman and by submitting counterfeit documents in support of this assertion. Following a postponement, the investigation was conducted on April 25 2002, and continued to July 7, 2002. By letter dated June 21,

2002, the Claimant was notified that he had been found guilty of the charge, and that he was dismissed from the Carrier's service in all capacities.

The Organization filed a claim on the Claimant's behalf, challenging his dismissal as without just and sufficient cause and in violation of the Agreement. The Carrier denied the claim.

The Carrier initially contends that the Claimant is guilty of the charges. The Carrier points out that the Claimant bid on a vacant B&B Mechanic Foreman position, but the award notice dated November 26, 2001, indicated that this position was not awarded due to "No Qualified Bidders." The Claimant thereafter questioned the fact that the position was not awarded, and he asserted to his supervisors and to the M/W Assignment Office that he was qualified for the position. The Carrier points out that in support of his alleged qualifications, the Claimant submitted an unsigned memorandum, supposedly authored by Michael Fama, indicating that the Claimant had successfully passed a B&B Foreman's test on March 9, 2000, in Penn Station, New York. The Claimant also submitted a copy of his Physical Characteristics and Qualification Record, which indicated that on November 19, 2001, he qualified on the territory from "A to F and Sunnyside." The Carrier investigated the Claimant's qualifications due to concerns over the legitimacy of these documents.

The Carrier emphasizes that in addition to the fact that the memorandum was unsigned, there is no record of the Claimant taking a Foreman test on March 9, 2000. The

Carrier points out that the Claimant took the B&B Foreman test on January 20, 2000, and he failed the test; the Claimant was advised that he could retake the test in 90 days. The Carrier further asserts that the only B&B Foreman tests given on March 9 were at New London and New Haven, CT, so the Claimant's assertion that he took the test at Penn Station, NY, is inaccurate. The Carrier additionally emphasizes that the record shows that the Claimant took, and passed, a Plumber's test on March 9 at Penn Station.

The Carrier further asserts that the Claimant was not eligible to retake the Foreman test on March 9, 2000, because he was required to wait 90 days from January 20, 2000, the date he first took and failed the Foreman test. The Carrier maintains that the Claimant retook the Foreman test on May 11, 2000, and he failed again. In addition, the Carrier argues that Fama left the Carrier's employment prior to the March 31, 2000, date on the memorandum that the Claimant submitted, so he could not have authored this unsigned document. The Carrier also points out that if the Claimant had successfully passed the Foreman's examination on March 9, 2000, as alleged, there would have been no reason for him to take the examination again on May 11, 2000.

The Carrier then argues that Barney's and Sniffen's testimony on the Claimant's behalf does not support the assertion that the Claimant took the Foreman's test on March 9, 2000, at Penn Station. The Carrier emphasizes that its records establish that the only dates on which Barney, Sniffen, and the Claimant were together for testing were June 29, 2000, when they all took the Inspector test, and January 20, 2000, when Barney and

Sniffen took the Inspector test and the Claimant took the Foreman test.

The Carrier then asserts that the evidence establishes that the Physical Characteristics and Qualification Record that the Claimant submitted was falsified. Mike Reilly, who signed the Claimant's qualification record on November 19, 2001, testified that the Claimant was not qualified at Sunnyside Yard, that the words "at Sunnyside" did not appear on this document when he signed it, and that these words were not in his handwriting. Reilly further stated, and the Claimant acknowledged, that the Claimant made an appointment to qualify on Sunnyside Yard on January 3, 2002. The Carrier emphasizes that there was no reason for the Claimant to make this appointment if he already had qualified on that territory as of November 21, 2001, as alleged on the qualification record that he submitted.

The Carrier goes on to argue that there is no merit to the Organization's assertions that Howell's testimony cannot be viewed as credible. If Howell did not work as a clerk in the Structures Department at Penn Station, as the Organization alleges, then her initials would not appear on the memorandum that the Claimant submitted. The Carrier argues that even if this assertion about Howell is viewed as accurate, the memorandum submitted by the Claimant nevertheless clearly was a forgery. With regard to the Organization's allegations of confusion regarding the test, and the contention that the Claimant should not be dismissed because of the Carrier's poor records, the Carrier maintains that the Claimant took the Plumber's test on March 9, 2000. If the Claimant actually had taken

and passed the Foreman's test on March 9, he would have had no need to retake the Foreman's test on May 11, 2000. If the Carrier had misplaced the Claimant's March 9 Foreman's test, as alleged, then the Claimant never would have received the memorandum indicating that he passed this test. The Carrier argues that its records accurately reflect the tests taken by its employees on various dates; the Claimant clearly did not take the Foreman's test on March 9, 2000, as alleged. The Carrier additionally contends that it cannot accept the Claimant's assertion that he was confused about what qualifications he possessed. Instead, the evidence demonstrates that the Claimant falsified his records and forged documents in order to be awarded the vacant B&B Foreman position advertised on November 12, 2001.

The Carrier maintains that the Claimant's actions clearly were dishonest and in violation of the Carrier's Standards of Excellence. Dishonesty in any form is grounds for dismissal because it breaks the bonds of trust necessary in an employer-employee relationship. The Claimant's conduct irreparably harmed that relationship, and the Carrier's decision to dismiss him was justified. The Carrier emphasizes that the seriousness of the charges against the Claimant, and the overwhelming evidence of his guilt, support the discipline of dismissal. The Carrier ultimately contends that the claim at issue should be denied in its entirety.

The Organization initially contends that in cases involving alleged dishonesty, the Carrier shoulders a heavier burden of proof than applies in other disciplinary matters.

The Organization argues that a review of the record in this case demonstrates that the Carrier failed to prove that the Claimant performed any act of dishonesty. The Organization emphasizes that the Claimant flatly denied falsifying either of the documents involved here. Moreover, the Carrier's shoddy record-keeping was brought into question at several points. Among other examples, although the Carrier emphasized that Fama was no longer employed by the Carrier on the date of the qualification memo, there was substantial testimony that Fama did author and send this memo to the Claimant.

The Organization argues that the Carrier based its decision of guilt on mere speculation and supposition. The Organization emphasizes that this and similar Boards repeatedly have held that a carrier's decision to discipline an employee must rest on substantially more than speculation and conjecture. The Organization maintains that the Carrier did not prove that Fama did not author the qualification memo. Moreover, the Claimant received this memorandum and had no reason to doubt its validity. The Organization argues that the Claimant acted upon the information contained in this memo, and the Carrier did not call this memo into question until more than one and one-half years later.

The Organization maintains that if some discipline is warranted here, the record establishes that the Claimant did not enjoy the benefit of progressive discipline before the Carrier implemented its decision to dismiss him. The Organization asserts that an employee must receive the benefit of progressive discipline before receiving the ultimate

penalty of discharge, and there is ample precedent for the Claimant's reinstatement. The Organization ultimately contends that the 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 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 and that he falsified his personal qualifications by falsely asserting himself to be a qualified B&B Foreman. The evidence presented by the Carrier, which is set forth above, met the heavy burden that applies to a Carrier in dishonesty cases. The evidence was overwhelming that the Claimant had not passed the appropriate exams and had submitted counterfeit documents in support of his false qualifications.

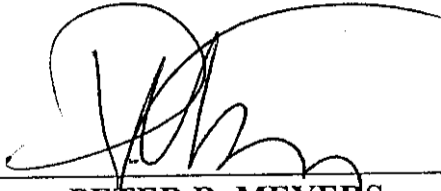
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

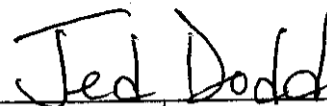
Dishonesty is very often considered to be one of the most serious offenses because once an employee has been dishonest, the Carrier could no longer depend on him or her in the future. This Claimant was found guilty of dishonesty. He had only been working for the Carrier for less than four years. Given the seriousness of the offense and the length of his seniority, this Board cannot find that the Carrier unreasonably, arbitrarily, or

capriciously decided to terminate the Claimant's employment. Therefore, the claim will be denied.

AWARD:

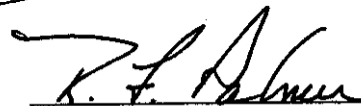
The claim is denied.



PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 9/29/03



CARRIER MEMBER

DATED: 9/29/03