

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

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

Case No. 235

STATEMENT OF CLAIM:

Appeal of the dismissal issued to Welder Francisco Flores for alleged failure to follow the Carrier's Standards of Excellence involving Trust and Honesty. (System File BMW-501D).

FINDINGS:

At the time of the events leading up to this claim, the Claimant, Francisco Flores, was employed by the Carrier as a Welder, headquartered at Chicago, Illinois.

By letter dated February 25, 2004, the Claimant was notified to appear for a formal investigation and hearing on charges that the Claimant allegedly provided the Carrier with false information in regards to his true identity in violation of the Carrier's Standards of Excellence involving Trust and Honesty. The Carrier alleged that on February 13, 2004, at the Claimant's request, the Carrier verified the employment of the Claimant as "Margarito Flores, Social Security No. 450-15-1790," with the U.S. Department of Immigration and Naturalization. Subsequent to that request, the Carrier alleged that on February 23, 2004, the Claimant submitted documentation showing that his identity was not "Margarito Flores, Social Security No. 450-15-1790," but that of "Francisco Flores, Social Security number of 331-02-3004." The Carrier charged the

Claimant with dishonesty.

After one postponement, the hearing took place on March 22, 2004. By letter dated March 30, 2004, the Carrier notified the Claimant that, as a result of the testimony provided at the hearing, the charges against him had been proven. The Carrier indicated that the Claimant knowingly worked under a false name and social security number in violation of the Carrier's Trust and Honesty standard. On March 31, 2004, the Carrier informed the Claimant that he was being dismissed from the service of the Carrier effective that date.

The Organization filed a claim on the Claimant's behalf, challenging the assessed discipline. The Organization requested that the Claimant be restored to service with all rights unimpaired and that he be made whole. The Carrier denied the claim.

The Carrier maintains that the Claimant's employment with the Carrier began in 1986 and that the name and social security number on record with the Carrier identifies the Claimant as "Margarito Flores, Social Security Number 450-15-1790." The Carrier points out that in February of 2004, after complying with the Claimant's request to submit a verification of employment letter to the U.S. Department of Immigration and Naturalization verifying the Claimant's name and social security number on record with the Carrier, the Claimant requested that the Carrier process paperwork to change the name and social security number listed for him on the Carrier's records to the name that the Claimant provided on his passport and the number provided on his social security card, i.e., "Francisco Flores Lopez, Social Security Number 331-02-3004." The Carrier

argues that the Claimant was dishonest when he provided the Carrier with a false name and social security number which he utilized during his lengthy tenure with the Carrier. The Carrier points out that the Claimant admitted to having full knowledge that he was working for the Carrier under another person's identity. The Carrier contends that the Claimant's actions put the Carrier at serious risk under Immigration Laws, as well as with the Internal Revenue Service, and also exposed the Carrier to potential liability when the Carrier verified the Claimant's employment to the U.S. Department of Immigration and Naturalization under a false name and social security number. The Carrier further points out that it was not aware that the Claimant was in the United States illegally and that it was not an accepted practice for the railroad to hire illegal immigrants. The Carrier maintains that it did not hire the Claimant, but that the Claimant was hired by Chicago Union Station prior to Amtrak taking possession of Chicago Union Station. The Carrier also points out that even though the Organization maintains that the Claimant's outstanding work record should be taken into consideration in determining discipline, the Carrier maintains that the Claimant's work record does not excuse his dishonest actions. The Carrier contends that dishonesty in any form is grounds for dismissal as it breaks the bond of trust necessary in an employee-employer relationship. The Carrier argues that the Claimant acted in violation of the Standards of Excellence governing Trust and Honesty. The Carrier points out that the Claimant was provided a copy of the Standards of Excellence and was well aware of the Carrier's goals, values, and expectations.

The Carrier maintains that the Claimant was afforded a fair and impartial hearing

and the full extent of due process to which he is entitled under the labor agreement. The Carrier points out that there is substantial probative evidence contained in the transcript that establishes the Claimant's guilt and that the discipline of dismissal assessed is commensurate with the seriousness of the offense. The Carrier argues that the Claimant improperly and dishonestly worked under a false name and social security number throughout his employment with the Carrier.

The Organization argues that the Claimant was initially hired by Vice President H. Bidding of Chicago Union Station on December 6, 1984, with the full knowledge that the Claimant had not legally entered the United States. The Organization maintains that the Claimant began working for the Carrier under an assumed name and social security number with the understanding that when he obtained proper residency status, his Carrier records would be corrected. The Organization points out that subsequent to the Claimant's hiring, Chicago Union Station became under the control of Amtrak. The Organization contends that the Claimant's dismissal was a result of information that the Claimant supplied upon obtaining his proper credentials and legal status. The Organization argues that the Claimant was complying with the understanding that he had with the Vice President of Chicago Union Station when he was first hired, but that the Carrier used the information that the Claimant provided to prefer charges against him. The Organization maintains that the Claimant was straightforward and truthful with the Carrier and did not attempt to hide any pertinent facts from the Carrier to maintain his employment. The Organization argues that during the course of the Claimant's

employment, he established an unblemished record and earned the respect of co-workers and supervisors. The Organization contends that the Carrier did not prove that the Claimant failed to follow the Trust and Honesty standard of the Carrier's Standards of Excellence and, therefore, the Carrier had no basis upon which to impose discipline.

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 when he worked under a false name and social security number throughout his employment with the Carrier dating back to 1986. The Claimant admitted at the hearing that when he started working in Chicago's Union Station in 1984, he did not use his real name or his real social security number. The Claimant stated that the person who hired him knew that he was in the United States "improperly." According to the Claimant, the Vice President of Chicago Union Station said that he could be hired and that he should try to fix it. There was no evidence presented at the hearing that refuted the Claimant's testimony with respect to his initial hiring.

The record reveals that the Claimant worked successfully with the Carrier for over eighteen years. It was only recently that he had to come clean with respect to his real name and his real social security number. However, the actions on the part of the Claimant consisted of dishonesty in violation of the Carrier rules.

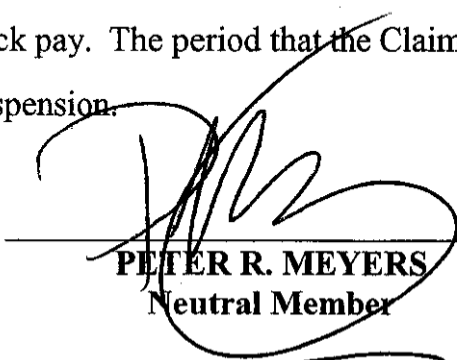
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

This case is extremely unusual and the result in this case will probably never be able to be cited as authority because of the unusual facts. However, this Board has come to the conclusion that the Claimant should be reinstated to service with the Carrier, without back pay. The period of time that the Claimant has been off since his dismissal shall be considered a lengthy disciplinary suspension. The Claimant was clearly guilty of dishonesty, but that dishonesty was, to some degree, known to the Carrier's predecessor company from the outset. The Claimant probably should have done the right thing long ago, but the fact that he did not and the fact that the Carrier did not require him to do so, mitigates the wrongdoing of the Claimant in this very unusual case and justifies his reinstatement.

AWARD:

The claim is denied in part and sustained in part. The Claimant shall be reinstated to service but without back pay. The period that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER



CARRIER MEMBER

DATED: 5/3/05

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