

PUBLIC LAW BOARD NO. 6598

PARTIES) Canadian National (GTW)
TO)
DISPUTE) United Transportation Union-Yardmasters Department

STATEMENT OF CLAIM:

Claim is made for reinstatement of Yardmaster Kahn, paid for all time lost, all rights restored, seniority unimpaired and reimbursement for health care expenses incurred.

OPINION OF BOARD:

On January 19, 2002 claimant C. Kahn was notified to attend an investigation on January 24, 2002. The investigation was being held to determine his responsibility, if any, for violating Operating Rules I and R for his alleged theft by misuse of company credit on January 17, 2002 and discourteous conduct toward a company official on January 19, 2002. The investigation was held on January 24, 2002. Following the investigation the claimant was found guilty of violating Rule I and R and in a letter dated February 1, 2002 was notified that he was dismissed from the services of the Carrier.

At the outset of this case, the Organization has raised several procedural objections that they feel did not afford the claimant a fair and impartial investigation with his right to "due process" as guaranteed him under the provisions of Article 6. The first objection raised by the Organization was that the investigation was not held in a

timely manner in accordance with Article 6 of the Collective Bargaining Agreement. The applicable provision of Article 6 provides:

“(b) If a Yardmaster is held under charges and found not guilty, he will be paid for all time lost.

(1) A Yardmaster called to attend an investigation under charges and found not guilty will be paid for time lost.

(2) If a Yardmaster is held out of service under charges, he shall have an investigation within three (3) days, and a decision within thirty (30) days thereafter. In case the discipline or dismissal is found to be unjust, he will be exonerated, reinstated if dismissed, and paid for all time held from service.”

The Organization stated that the language clearly provides that the investigation must be held within three days from the date the Yardmaster is held out of service. The Organization cited correspondence addressed to the General Chairman by the General Manager acknowledging that the investigation should have been held with 72 hours from the date the claimant was held out of service. The Organization cited numerous awards to support their position that the claim should be sustained because the proscribed time limits to hold an investigation in the agreement were violated.

The Organization's second objection was that the investigation transcript was not timely afforded to the Organization. Article 6 paragraph (c) provides:

"Decisions in such cases shall be subject to appeal to the highest designated officers of the Company. In case of appeal his duly accredited representative will be given a transcript of the evidence taken at the trial or investigation"

The Organization concluded that Article 6 provided that the Carrier must make its decision and furnish the transcript within thirty (30) days.

The Carrier argued that the General Chairman was furnished a copy of the transcript. They also pointed out that the delay in furnishing the transcript did not hinder the Organization's progression of the claim as the Carrier granted time limit extensions to the Organization. The Carrier cited several awards to support its position.

The Board does not find that Article 6 required the Carrier to provide both its decision and the transcript within thirty days. The provision for providing the decision within thirty days is contained in a different paragraph from the requirement to provide a transcript. The paragraph requiring the Carrier to furnish a transcript does not contain any time limits. The Board also finds that the delay in providing the transcript did not in any way prevent the Organization from providing an adequate appeal to the claimant's dismissal.

The Carrier argued that the fact that the investigation was not held within three days should not result in the discipline being overturned. They stated that that this provision merely provided that the claimant should be paid for any time lost beyond the three-day time limit. They further provided several decisions to support its position.

The Board has reviewed the decisions provided by both parties. The decisions, cited by the Organization, sustained claims on the basis that investigations were not timely held within the time limits proscribed in the agreements. The decisions, cited by the Carrier, held that technical violations in the initial scheduling of investigations would not necessarily result in the reinstatement of the terminated employees. One of the awards cited by the Carrier involved another Organization on this property. In that case the Carrier on the property acknowledged that the investigation was not timely and compensated the claimant for any loss of earning caused by the delay as the Carrier did in the present case. The Third Division in Award 36042, after considering historical precedent, held "it is our conclusion in this case that the three-day delay in holding the investigation did not prejudice the Claimant's presentation of the facts or testimony relevant to his position in connection with the altercation that occurred." This Board will follow the above decision on the property and agrees that the claimant was not denied any due process due to the delay in holding the investigation.

The record clearly proved that the claimant was guilty of violating Operating Rules I and R as charged. The Rules provide:

I. Furnishing Information and Conduct

... Employees must not be careless of themselves or others, insubordinate, dishonest, negligent, quarrelsome or discourteous.

R. Credit.

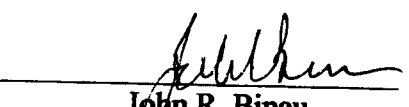
Unless specifically authorized, employees must not use the railroad's credit and must not receive or pay out money on the railroad's account

The claimant testified that he called Waddle's, a mobile tire service company, to repair a damaged tire on his vehicle on January 17. He further testified that he provided Waddle's with information that stated one of the Carrier's vans were being repaired including the VIN number and license plate number of that vehicle. He stated that he signed for the repair made to his vehicle using this false information. The Carrier discovered the claimant's fraudulent behavior when Waddle's attempted to be paid using the false information provided by the claimant as that vehicle had been taken out of service. The record also showed that the claimant did not have permission to have this repair done to his personal vehicle. The transcript clearly proved that the claimant's actions were against policy, were fraudulent and were intended to secure a tire for his personal vehicle at Carrier's expense.

Numerous Boards have held that honesty is a necessary requisite of the employment relationship. In this case the claimant broke the employer-employee

relationship with his fraudulent behavior. Such conduct does not have to be tolerated by the Carrier.

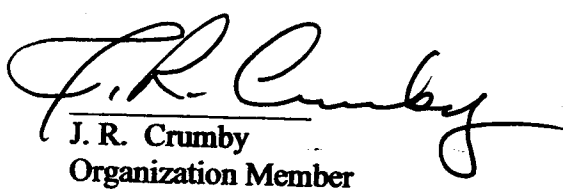
Findings: **Claim Denied.**



John R. Binau
Neutral Member



Myron Becker
Carrier Member



J. R. Crumby
Organization Member

DESSERT

Chicago, IL