

REVISED

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12935
Docket No. 12874
95-2-94-2-11

The Second Division consisted of the regular members and in addition Referee James E. Yost when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers, System Council No. 9
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(The Grand Trunk Western Railroad Company

STATEMENT OF CLAIM:

- "1. That the Grand Trunk Western Railroad Company violated agreement Rule 31 when on October 6, 1992, Equipment Technician K. Klaaren was disciplined by being discharged from service as a result of the hearing held on September 22 and 23, 1992; and,
2. That the Grand Trunk Western Railroad unfairly and unjustly disciplined Equipment Technician K. Klaaren as a result of a hearing that was neither fair nor impartial and that did not prove Equipment Technician K. Klaaren guilty; and accordingly,
3. That the Grand Trunk Western Railroad Co., now make Equipment Technician K. Klaaren whole for all time lost as a result of Carrier's unfair and unjustly discipline and expunge his record of all mention of this incident. That further, Claimant be made whole for all fringe benefits, including but not limited to vacation privileges, health, dental and life insurance, and retirement credits, to which he would have been entitled to (by) virtue of his continued employment."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was employed as an Equipment Technician in Carrier's Communication Department headquartered at Flint, Michigan, with a service date of May 9, 1968. He was assigned to work 8:00 AM to 4:30 PM, Monday through Friday to make repairs and perform routine maintenance in territory extending from Battle Creek, Michigan, to Port Huron, Michigan, using an assigned company vehicle. While servicing the territory, Claimant was required to keep in contact with the Battle Creek Test Center, which relayed assignments and/or messages to him.

On August 21, 1992, Claimant left his headquarters point in a private vehicle at approximately 9:30 AM. Supervision was unable to reach him during the day and the Test Center had no record of him calling in.

On August 27, 1992, Claimant reported for duty 35 minutes late and left his headquarters at 9:00 AM in his assigned vehicle. He was later observed speeding and driving in a careless manner. He performed work for two hours at Port Huron, Michigan, and thereafter was observed going to two restaurants, a grocery store and a private residence. He returned to headquarters at 4:00 PM and left for the day at 4:05 PM.

On August 28, 1992, Claimant reported 10 minutes late for work and left his headquarters in his assigned company vehicle at 9:42 AM. Again he was observed speeding and driving in a careless manner. He was observed visiting a car dealership in Dearborn, Michigan, for a considerable period of time and did not return to headquarters until 4:40 PM.

Claimant submitted his time sheet to payroll showing he worked 8 hours on August 21, 27 and 28, 1992.

On August 31, 1992, Claimant backed a company truck he was operating into a ditch causing it to turn over on its side doing considerable damage.

Notice of Investigation was issued to Claimant September 2, 1992, reading:

"Dear Mr. Klaaren:

Please arrange to attend a formal investigation to be held on September 9, 1992, at 10:00 A.M., in Detroit, MI, in the Headquarter's Conference Room 'D', to determine your responsibility, if any, for the following charges:

Charge 1 - Alleged unauthorized absence on August 21, 1992 from 0930 Hrs. to 1630 Hrs.

Charge 2 - Alleged unauthorized absence on August 27, 1992 from 1340 Hrs. to 1448 Hrs.

Charge 3 - Alleged unauthorized absence on August 28, 1992 from 1250 Hrs. to 1630 Hrs.

Charge 4 - Alleged falsification of your payroll on August 21 and 27, 1992, when you claimed eight hours pay for each date while absent from work.

Charge 5 - Improper operation of Company vehicle on August 27, 1992 and August 28, 1992 account alleged excessive speed with Company vehicle and alleged careless driving in violation of G.T. Safety Rule 3181 requiring obedience of all motor vehicle laws.

Charge 6 - Alleged careless operation of Company vehicle resulting in accident and damage, approximately \$2,000.00, to that same Company vehicle on August 31, 1992.

You may be accompanied by representation of your choice, subject to provisions of your Working Agreement, and you may, if you so desire, produce witnesses in your behalf at no expense to the Railroad."

The Investigation was postponed at the Organization's request, rescheduled and held commencing September 22, 1992, and concluded on September 23, 1992.

Claimant was notified by letter dated October 6, 1992 that evidence adduced at the Investigation proved him guilty of the charges and accordingly, he was discharged from service effective immediately.

Appeal of Claimant's dismissal was filed by the Organization and handled to a conclusion on the property in accordance with the Controlling Agreement. Failing to obtain satisfactory resolution, the Organization filed an appeal with this Board for adjudication.

This Board has reviewed the Investigation transcript and can find no foundation for the allegation that Claimant was not afforded a fair and impartial Investigation. This is so because the record reveals Carrier issued precise charges against Claimant and afforded him sufficient time to prepare a defense, obtain witnesses and representation. Claimant was present at the Investigation and represented by representative of his choice. Both were afforded full opportunity to present statements, evidence and cross-examine Carrier witnesses.

Pursuant to study of the voluminous Investigation transcript and exhibits, this Board is persuaded that Carrier adduced substantial evidence in support of its charges numbered 1, 2, 3, 4 and 6. In dealing with the question of what constitutes substantial evidence, this Board stated in Second Division Award 11627:

"In order to sustain discipline of an employee, it is the responsibility of the Carrier to adduce substantial evidence in the investigation in support of the charges. The 'substantial evidence rule' has been set forth by the Supreme Court of the United States as:

'Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' (Consol. Ed./ Co. vs Labor Board 305 U.S., 197,229.)"

In an effort to overcome the charge of falsification of payroll, Claimant and the Organization argued that Claimant was using comp time. Claimant's supervisor testified that he did not have a policy of comp time, i.e, time off for overtime worked. Claimant in turn submitted a statement from an Equipment Technician employed at Edwardsburg, Michigan, reading:

"It has been my experience that the communication department has handled comp time in the following manner: Arrangements are made to take any comp time when there is no troubles of any kind that needs attention that day; such as line problems, phone repair, ect."

The gravamen of this argument is that even accepting the argument that comp time existed, Claimant is still guilty of falsifying his payroll for the simple reason that no evidence was presented to show that Claimant made or attempted to make arrangements with proper authority to take comp time. In fact, we note in the Investigation transcript Claimant's admission that he did not arrange with supervision to take comp time.

Falsifying a payroll constitutes theft and no employer can be expected to tolerate it. Employees who engage in theft of any kind do so at their own peril. Standing alone, theft is a dismissible offense.

Having determined that Carrier adduced substantial evidence to support its charges, we turn to review of the discipline imposed. This Board cannot interfere with the discipline assessed by Carrier unless it finds it to be unreasonable, arbitrary or capricious. In the instant case, we can make no such finding because of the substantial evidence supporting charges numbered 1, 2, 3, 4 and 6, coupled with Claimant's prior discipline record covered by PLB 3313, Docket No. 1, and PLB 4683, Case No. 1, leaves no opening for the Board to interfere with Carrier's assessment of dismissal from service.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 16th day of August 1995.