

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13093
Docket No. 12980
96-2-94-2-129

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (**(International Brotherhood of Electrical Workers**
(CSX Transportation, Inc. (former
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

- “1. That CSX Transportation, Inc., formerly the Chesapeake and Ohio Railway Co., violated Rule No. 37 of the controlling agreement when on February 9, 1993, Electrician G. F. Keller was unjustly dismissed as a result of hearing on January 13, 1993, that was neither fair nor impartial and, accordingly;
2. That Electrician Keller be reinstated with seniority rights unimpaired and be made whole for all lost wages, medical and hospitalization benefits, disability insurance benefits, vacation time credits and retirement credits that would have accrued 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.

At the time the incidents precipitating this case occurred, Claimant was employed as an Electrician at Carrier's Huntington Locomotive Shops in Huntington, West Virginia. On December 9, 1992, Claimant was charged with falsification of his time card for the dates of Monday, November 23 and Tuesday, November 24, 1992, and being absent without permission on those dates. An Investigation was held on January 13, 1993. By letter of February 9, 1993, Claimant was notified that he was dismissed from Carrier's service as of that date. The basis upon which Carrier found that Claimant had falsified his time card was that he claimed "Safety Bonus Time" in advance of qualifying for that time.

At the outset, the Organization maintains that Claimant was not afforded a fair and impartial Hearing. This Board finds no evidence on the record to support the Organization's position on this point. Claimant had ample time to formulate his defense, and a review of the transcript indicates that he was given sufficient opportunity to present testimonial evidence on his own behalf.

It is the position of the Carrier that Claimant intentionally falsified his time card when he applied for "Safety Bonus Time" on the dates in question, with full knowledge that he was ineligible to claim such time. Further, Claimant made no attempt to correct the entry, once he found that he had not been granted "retroactive" Safety Bonus Time by his supervisor. Moreover, Carrier points out that even if, *arguendo*, Claimant had been Safety qualified, he would have been entitled to only 12 hours of Safety Bonus Time, rather than the 16 he claimed. The Carrier maintains that the fact that the Payroll Clerk caught the error and Claimant received no payment for his actions is irrelevant. Finally, Carrier asserts that in view of his past discipline record the ultimate penalty of dismissal was warranted.

The Organization contends that Claimant had no intention of defrauding Carrier when he filled out his time card for the dates in question. Rather, he turned his time cards in early, as instructed by his supervisor, and included what he hoped would be approved as "Safety Bonus Time," awarded retroactively once he took the Safety Certification Test. Further, the Organization points out that testimony on the record established that other employees have been granted full Safety Bonus Time credit, even though they took the test toward the end of the year.

A thorough reading of the lengthy transcript in this case suggests that Claimant may reasonably have thought he would be allowed to take Safety Bonus Time on the dates at issue, so long as he completed the Certification Test shortly thereafter.

Moreover, his supervisor acknowledged that on December 6, 1992, he had told Claimant he would check on how Claimant's time had been ultimately calculated and "let him know" when he found out. Further, there is unrefuted testimony on the record that when Claimant had previously been erroneously overpaid, he voluntarily sought out the Payroll Department Clerk and had her make the necessary adjustments to his future pay checks.

It is also clear on this record that Claimant delayed taking the Safety Certification Examination because of a prior disagreement with Carrier over Safety Bonus Time. In addition, it is apparent that he did not make an earnest effort, beyond asking his supervisor to check for him, to correct his time card. When his supervisor did not report back to him, he made no attempt to contact the Payroll Department himself -- something he easily could have done and, in fact, did do when he was previously overpaid. Thus, although Carrier has not shown that Claimant was guilty of intentionally falsifying his time card, Claimant shares a measure of culpability for the ensuing events. Accordingly, his discipline shall be reduced to a 30 day suspension. (Because the charge of being absent without leave on the dates in question is predicated upon a finding that Claimant intentionally falsified his time card, that charge is rendered moot.)

Finally, Carrier correctly pointed out that a portion of its backpay liability should be mitigated in light of the Organization's request for a four-month extension in processing this case (See Third Division Award 31538 and Fourth Division Award 4974). Therefore, Claimant shall receive backpay for his time out of service less the 30 day suspension, but such backpay shall not include the period covered by the time limit extension.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 30th day of December 1996.