

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13919
Docket No. 13804
07-2-06-2-13

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Soo Line Railroad Company)

STATEMENT OF CLAIM:-

- “1. That in violation of the controlling Agreement, Rule 35 in particular, the Canadian Pacific Railway, as a result of an investigation held on April 6, 2005 at Portage, Wisconsin, unjustly and arbitrarily dismissed Communication Technician Donald R. McKnight from service.
2. That accordingly, the Canadian Pacific Railway be ordered to promptly return Communication Technician Donald R. McKnight to its service and to make Communication Technician Donald R. McKnight whole for all lost wages, rights, benefits and privileges which were adversely affected as a result of the investigation and unjust assessment of discipline, and further that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 35, Paragraph S of the controlling Agreement.”

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.

On March 15, 2005, Carrier notified Claimant to appear for a formal Investigation on March 23, 2005. The Investigation was postponed and subsequently held on April 6, 2005, to develop all the facts as to whether or not Claimant had any responsibility in alleged payroll discrepancies on January 9, 16, 23, February 2, 7, 8, 9, 10 and 18, 2005.

On May 26, 2005, Claimant was notified that he had been found guilty as charged and was dismissed.

It is the position of the Organization that Claimant was deprived of a fair and impartial Investigation because the Hearing Officer was a Supervisor of the same craft as the Claimant and had direct involvement in this matter and made the finding of discipline. On the merits it argues Carrier erred in its dismissal because it failed to prove that Claimant purposely submitted improper requests for compensation.

Carrier argues there is no substance to the Organization's argument that Claimant was denied a fair and impartial Hearing. It further argues that the transcript indicates the Claimant was submitting requests for compensation for time worked which could not be verified. This was a serious act of dishonesty and it had no alternative, but to terminate the Claimant.

The Board has reviewed the transcript and record of evidence and finds no merit to the Organization's argument that Claimant was deprived of a fair and impartial Investigation because of the Hearing Officer's involvement in the matter. The record substantiates that the Hearing Officer instructed another employee to do a payroll verification of Claimant's work time and it further indicates he did not

issue the discipline. His involvement in this instance does not rise to the level of pre-judgment.

The dispute will be resolved on its merits. The facts reveal that Claimant was employed as a Communication Technician at Portage, Wisconsin, at the time of the incident under investigation, having been hired on July 11, 2000.

A review of the testimony indicates that Claimant submitted overtime on all of the dates listed in the charges. S&C Supervisor Hansen testified that overtime was submitted on days other than Claimant's rest days, which is contrary to the Agreement. He also testified that all time worked should be shown on the hours of service log. The original hours of service log (which was filled out by the Claimant) was entered into the record and on each date listed in the charges it showed zero hours worked by the Claimant. A recap of that record is listed below:

Service Log

Jan. 9 -- zero hours
Jan. 16 -- zero hours
Jan. 23 -- zero hours
Feb. 2 -- nine hours on duty

Feb. 7 -- eight hours on duty

Feb. 8 -- eight hours on duty

Feb. 9 -- eight hours on duty

Feb. 10 -- eight hours on duty

Feb. 18 -- eight hours on duty

Overtime Submitted

Jan. 9 -- four hours
Jan. 16 -- four hours
Jan. 23 -- five hours
Feb. 2 -- eight hours regular,
four hours overtime
Feb. 7 -- eight hours regular,
three hours overtime
Feb. 8 -- eight hours regular,
two hours overtime
Feb. 9 -- eight hours regular,
two hours overtime
Feb. 10 -- eight hours regular,
two hours overtime
Feb. 18 -- eight hours regular,
four hours overtime

The discrepancy between the service log and overtime documents listed above (both made out by the Claimant) show a 30 hour overtime difference. Supervisor Hansen

testified the overtime submitted by Claimant was not in accordance with the Agreement and was not authorized.

S&C Supervisor Byers in Minneapolis was called to the Hearing to explain the trouble ticket process. He testified that when the Control Center receives a call that there is a problem to be corrected out in the field it opens what is called a "trouble ticket" an order to work. The Center contacts the appropriate maintainer who then calls the Center back when the problem is corrected, after which the Center closes out the ticket. Beyers recalled only one ticket (January 23) that Claimant was called for in the dates listed in the charges. Beyers also testified that Carrier's policy requires that all trouble reports should go through the Control Center.

When Claimant was questioned about the discrepancy between the service log and the overtime submitted he stated the following:

"Yes, what happened was I got behind in my logs and I was notified by Bruce Hansen that the FRA was coming and to get caught up on my logs and I caught up on my logs quickly without reviewing my actual time from my logs."

When further asked about who had called him for trouble assignments he could not recall all of the dates. However, he did testify that on February 7, 8, 9 and 10, 2005 Supervisor Hansen told him to check on hot boxes for testing. When asked whether Hansen authorized overtime for the work he could not recall. Supervisor Hansen explicitly testified that no overtime was authorized on the aforementioned dates.

Claimant also testified that the overtime related to general wiring system for a computer on February 18 was authorized by Supervisor Hansen after which Hansen disputed the Claimant's testimony stating that the overtime was not authorized.

Claimant next testified that only 40 percent of his trouble calls came from the Control Center while the majority came from Dispatchers and other local people. He stated that when he received a call he would go out and finish the job without the Control Center even being aware of the problem and this was the manner he had

done his work since being hired without complaint or any instructions to the contrary.

Again Supervisor Beyers and Hansen told a different story. Beyers stated that all trouble tickets are to be reported through the Control Center and Hansen testified that he had issued instructions that all trouble calls were to be routed and/or documented through the Control Center and that he had orally instructed the Claimant and all other employees under his supervision to follow those guidelines.

A review of the testimony of Supervisor Hansen and Byers shows it to be in direct conflict with that provided by the Claimant. However, the testimony of both Supervisors was more credible than Claimant's self-serving statements. Additionally there is no showing that either Supervisor had anything to gain by fabricating testimony. The Carrier met its burden of proof that Claimant was guilty as charged for all the dates listed in the charges except for January 23, 2005, which the Control Center confirmed Claimant was contacted for a trouble call.

The only issue remaining is whether the dismissal was appropriate. Theft and/or dishonesty within this industry has often been characterized as an industrial "capital offense" and there is abundant arbitral authority holding it to be worthy of dismissal, even for first-time offenders with clear employment records. The Board finds and holds that the dismissal is appropriate as it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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.

Form 1
Page 6

Award No. 13919
Docket No. 13804
07-2-06-2-13

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 6th day of August 2007.