

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14064
Docket No. 13943
14-2-NRAB-00002-120014

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

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 25 in particular, the BNSF Railway Company, as a result of an unfair and unwarranted investigation held on March 30, 2011 at Sheridan, Wyoming, unjustly and arbitrarily assessed Telecommunications Department Electronic Technician Daniel T. Duff the ultimate discipline of being dismissed from employment with the BNSF Railway.
2. Accordingly, the BNSF Railway Company be ordered to promptly return Electronic Technician Daniel T. Duff to its service and to make him whole for any and all lost wages, rights, benefits and privileges which were adversely affected as a result of the unjust assessment of discipline and that all record of this matter be expunged from his personal record, all in accordance with the terms of Rule 25 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.

This dispute centers on the Carrier's dismissal of Claimant Daniel T. Duff effective April 4, 2011, following a formal Investigation conducted on March 30, 2011, after it determined that he had been responsible for multiple acts of "dishonest conduct, time theft and unauthorized absence." The Organization's timely claim challenging that action ensued, was handled on the property in the usual and customary fashion up to and including the highest designated Carrier Officer, and when it remained unresolved, it was conferenced and advanced to this arbitral forum for binding resolution.

The underlying facts are somewhat atypical. The record indicates that on Friday, January 28, 2011, the Claimant's supervisor, Telecommunication Maintenance Manager Jeffrey Talley, received a call from one of the Claimant's co-workers - fellow Electronic Technician Mike Kunkel - alleging that the Claimant had been absent from work excessively. Talley testified that he asked Kunkel to reduce his concerns to writing, which he did, mailing his statement to Talley the same day. Received in evidence at the Claimant's Investigation, the statement reads as follows:

"Jeff:

This is to inform you what is going on in Sheridan. Dan Duff has almost quit coming to work. He very seldom is at work in the morning. On some days he comes in at around 2 in the afternoon and stays until 3 or 3:30. I used to do his time roll but stopped about 3 years ago because he was at work so seldom. Since then he does his own time roll. There are many days that he does not come in at all. One reason he does not come to work much is he has very little to do. If he is at work he sits in his shop with the lights off, the shades closed and the door locked. If people knock on the door he does not open it. Then they come to my shop and I take care of them. I do not ask him to do

anything anymore because it does not work. I have had people calling me on vacation because they could not get ahold of Dan. It is a bad situation and I debated for years if I should say anything. He calls into the conference calls from his house which makes it appear he is at work.

Mike Kunkel”

It appears that after the Claimant then proved to be unavailable to help troubleshoot a work-related issue on Monday, January 31, 2011, Talley contacted him at home around 10:00 A.M. The Claimant advised him that he was experiencing “some personal issue.” In response, Talley asked that whenever he encountered problems necessitating his absence he notify the Carrier. After then receiving Kunkel’s letter on February 1, Talley commenced surveillance of the Sheridan Yard with the intention of ascertaining the validity of Kunkel’s complaint.

It is undisputed that the Claimant’s assigned work hours were 7:00 A.M. to 3:30 P.M. At 8:30 A.M. on February 2, 2011, Talley determined that Duff’s car was not at his shop by 8:30 A.M., but recognized that he might be working offsite. At 10:15 A.M., however, the Claimant was observed driving his company truck, although not near his shop. Talley then followed the truck to the Claimant’s home, where he saw it parked from 10:33 A.M. until 12:42 P.M., in excess of the Claimant’s designated 30-minute lunch break. Due to other commitments, Talley was unable to see where the Claimant went when he left home, or to resume surveillance again until Wednesday and Thursday, February 9 and 10. On February 9, against a 7:00 A.M. report time, the Claimant arrived at work at 8:11 A.M. and left the shop at 9:25 A.M. His company truck was observed at his home from 10:39 A.M. until 12:48 P.M. and then at the shop from 1:08 P.M. until 3:15 P.M., when the Claimant left work. Lastly, on February 10 Talley witnessed him arrive at work at 6:20 A.M. and leave in the company truck at 6:30 A.M. At 10:17 A.M. Talley and the local Trainmaster observed the Claimant pulling up to his home in the company truck, where he remained until noon. The truck was then seen again at the shop from 1:34 P.M. until 3:18 P.M., when the Claimant was seen leaving work.

Record evidence establishes that when confronted, the Claimant admitted that he had been at home during periods when he had claimed eight hours of work time. On February 17 he was asked to accurately re-enter his time. Although he modified his reports, he did so incorrectly, with Talley on February 21 noting that the Claimant had gone back into the system and changed his pay records again for numerous days, falsely entering pay code 30 - designating vacation days - for a number of days at issue, despite having no approval for vacation usage during those periods.

The Organization offers several arguments on the Claimant's behalf. Among them, it suggests that: (1) the lack of immediate supervision at Sheridan may have contributed to the problem under consideration; (2) the Carrier's failure to remove the Claimant from service was inconsistent with its later insistence on serious misconduct; and (3) notwithstanding the Carrier's contentions that the Claimant never did accurately report his time, the payroll was ultimately submitted for processing.

The Board carefully considered those and other contentions and finds each to be unpersuasive. In our judgment, while the Board cannot entirely dismiss the notion that inadequate supervision may contribute to a lax work culture, that theory warrants deep discounting in context. The hard reality is that significant numbers of personnel in the transportation sector, air, rail and trucking alike, are unmonitored on a day-to-day basis. So those atmospherics neither explain nor excuse the Claimant's conduct as documented by the record before the Board. In repeatedly sloughing off, apparently with such frequency as to stimulate the wrath of co-workers - who, it must be noted, worked under the same minimal supervisory oversight - the Claimant showed serious disregard for the best interests of his employer and fellow Electricians alike.

The record reflects no legitimately mitigating circumstances. In truth, aggravating circumstances are demonstrated in the discouraging insensitivity to the Claimant's basic obligations as evidenced by his continued pattern of deception with pay record adjustments when called to answer. Given those facts, the dispute offers the Board no principled grounds for disturbing the Carrier's action to terminate his employment. Accordingly, the instant claim must be denied.

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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 22nd day of January 2014.