

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14068  
Docket No. 13956  
14-2-NRAB-00002-120027

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 May 25, 2011 in Amarillo, Texas, unjustly and arbitrarily assessed Telecommunications Department Electronic Technician Don E. Stuart the ultimate discipline of being dismissed from employment from the BNSF Railway.
2. Accordingly, the BNSF Railway Company be ordered to promptly return Electronic Technician Don E. Stuart 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.

On April 17, 2011, according to the record, the Claimant's supervisor, Jack Womack, was alerted to a report on the Carrier's hotline suggesting the Claimant was using a company vehicle for non-business purposes without authorization. Concerned, because he had in 2009 communicated to his employees notice of a change in the Carrier's Rules regarding using company vehicles for personal purposes, Womack conducted a conference call with his people the next day. In that discussion, he states that he re-emphasized that company vehicles could not be taken home or used for personal purposes. Claimant Stuart does not dispute that he was on the call.

On April 21, 2011, however, Womack observed Stuart's company vehicle on several occasions on what was for the Claimant a personal leave day. Initially, he testified that he saw the vehicle at the Claimant's home at 6:00 A.M. At 8:30 A.M., he then observed the Claimant driving the vehicle on the streets of Amarillo. Womack asserts without challenge that he drove past the Claimant's residence twice later in the day, at 11:30 A.M. and 2:08 P.M., and the vehicle could not be seen. When confronted by Womack on April 23, the Claimant admitted that his personal vehicle had been laid up for some time and he was using the company vehicle on April 21 for a dental appointment, and had in the interim been using it for commuting while not on duty or on call. Womack again reminded him of Carrier policy, and again, the Claimant did not deny reiteration of those instructions at that time.

Three days later, Womack was informed that the Claimant was still commuting in the company vehicle. Womack summoned him in for yet another discussion, and upon checking the vehicle's odometer, he concluded that the Claimant had driven more than 1,000 miles between April 5 and April 27, 2011, which he determined from Carrier records was irreconcilable with any business travel requirements. A formal Investigation was held on May 26, 2011, following which the Claimant, already on a 12-month discipline review period for a Level "S" Rules violation, was dismissed on June 8, 2011. This claim followed.

The Organization makes several arguments on the Claimant's behalf; chiefly among them that the Claimant had misunderstood the instructions received from Womack and believed he had permission to commute in the company vehicle until his car repairs were completed. Secondly the Organization stresses that no written policy is in existence addressing the use of company vehicles for commuting. Third, it contends that other Foremen had been allowed to commute in their company vehicles in the past whenever a supervisor in his discretion perceives a "business need," an undefined term. Accordingly, it asserts that the Claimant is the victim of disparate treatment.

After careful review of the record evidence, the Board finds the Organization's contentions unpersuasive. While BNSF's Vehicle Policy and Procedure Manual Section 7, Vehicle Responsibilities and Usage facially applies to Maintenance of Way personnel, limiting company vehicles to business use only and allowing use for commuting only when "authorized by a supervisor," reliable record evidence firmly establishes that the Claimant concedes that he had a clear understanding of Carrier policy in this regard up until his discussion with Womack on April 23, when he testified that he was given to understand that Womack told him that he could continue to use his vehicle until his personal car was back in service. According to Womack, however,

"... in the course of conversation with him [on April 23] he admitted to me that he was commuting in that [company] vehicle even when he was not on call. He said his personal car was out of service, I believe his exact words were that it would not pass inspection, and had been for quite a while. I told him that he should be home getting it [his personal car] road worthy rather than being at the office. I warned him not to charge overtime and he said that he had not intended to do so. I reiterated that he was not to commute in his company vehicle unless he was on call."

The Hearing Officer found credible the testimony of Womack to the effect that he had repeatedly made the Carrier's vehicle usage policy clear to his employees. That determination was undoubtedly aided by the statements of two other Electronic Technician co-workers of the Claimant, both of whom represented that Womack had clearly reminded everyone that "we were to park our company

vehicles and only use them or take them home . . . when we were assigned to on call duty” and could not use them for personal use.

As affirmed by generations of prior arbitral authority, responsibility for credibility determinations rests with Carrier Hearing Officers and may not lightly be disturbed absent patent error. Lastly, the Board finds the Organization’s argument relying on disparate treatment unavailing in the absence of specifically identified similar or analogous circumstances involving other employees.

For the reasons stated above, the claim will be denied.

**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.