

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14087  
Docket No. 13989  
14-2-NRAB-00002-140020

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

(Brotherhood Railway Carmen-Division of TCU/IAMAW  
PARTIES TO DISPUTE: (  
(BNSF Railway Company

STATEMENT OF CLAIM:

- “1. That the Burlington Northern Santa Fe Railroad Company violated the terms of the current Agreement, in particular Rule 35, when on October 15, 2012, Carman Peter P. Ditsch was dismissed from service for alleged improper conduct in the task of using a drill press to bore a pipe and using company material and time for personal reasons on August 21, 2012.
2. That accordingly, the Carrier be ordered to compensate Claimant eight (8) hours pay at the pro-rata rate for each workday he is withheld from service commencing October 15, 2012 until he is returned to active duty.
3. Additionally, the Carrier be ordered to make the Claimant whole as follows:
  1. returned to service with seniority rights unimpaired;
  2. made whole for all vacation rights;
  3. made whole for all health, welfare and insurance benefits;
  4. made whole for pension benefits including Railroad Retirement and unemployment insurance;
  5. made whole for any other benefits he would have earned during the time he is out of service;
  6. made whole for all wages, lump sum payments, general wage increases and cost-of-living adjustments;
  7. paid for any overtime hours that he may have lost during his suspension; and

8. all correspondence and record of the investigation be removed from his personal record and file.”

**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.

The Claimant, who was assigned as a Carman at the Carrier's Car Shop in Alliance, Nebraska, was dismissed from service following a formal Investigation in connection with the following:

“... your alleged improper conduct in engaging in the unauthorized task of using a drill press to bore a pipe, using improper tools for that task, and using company material and time for personal reasons in performing this task while employed as a Carman at the Alliance Car Shop on August 21, 2012, at approximately 1830 hours. The date BNSF received first knowledge of this alleged violation is August 22, 2012.”

The material facts are not seriously in dispute. At the formal Investigation, the Claimant testified that on August 21, 2012, while working his assignment at the Car Shop, he used a company drill press to bore a piece of pipe that he had taken from the company scrap bin and that he intended to use the pipe for his own personal post hole digger. The Claimant admitted that he did not consult with nor have the permission of any Carrier Officer to use the company material or equipment for his own personal benefit. The Claimant's primary defense of his actions was his contention that others had done the same sort of activity in the past without protest from local supervision. Neither the Claimant nor his Representative offered any specific evidence or examples of such allegedly accepted

behavior and there was testimony from Carrier supervision that they were unaware of a single case where an employee had been permitted to use company material for personal use. The Board finds that the Carrier provided clear and substantial evidence (including the Claimant's own admissions) that the Claimant was guilty of the offenses with which he was charged.

Relative to the discipline of dismissal assessed, the Board notes that the Claimant's actions amounted to theft regardless of the fact that the pipe may have been scrap, or that the Claimant may have quite erroneously thought that such behavior was condoned. Numerous Awards have consistently held that theft is an extremely serious offense that properly warrants the ultimate penalty of permanent dismissal. However, the Board has also taken into consideration that at the time of this incident, the Claimant had 34 years of service with the Carrier and a very good disciplinary record. Also, the Claimant was forthright both at the time he was initially questioned and at the formal Investigation that he had indeed used company material and equipment without permission. Without in any way justifying or excusing the Claimant's serious violation, the Board finds that the Claimant should be give one final chance to prove to the Carrier that he can be a productive and honest employee. Accordingly, the Board rules that the Claimant should be returned to service with seniority unimpaired, but without any payment for time lost.

**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 25th day of November 2014.