

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14155
Docket No. 14036
16-2-NRAB-00002-140071**

The Second Division consisted of the regular members and in addition Referee Don A. Hampton when award was rendered.

PARTIES TO DISPUTE: (**(International Brotherhood of Electrical Workers**
(**(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 in May 20, 2013 in Memphis, Tennessee, unjustly assessed Telecommunications Department Electronic Technician Cory Carpenter the ultimate discipline of being dismissed from employment of the BNSF Railway Company.
2. That accordingly, this Honorable Board overturn the decision rendered by BNSF, and further order that the BNSF Railway Company promptly return Electronic Technician Cory Carpenter 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.

Claimant was notified by letter dated May 8, 2013:

“An investigation has been scheduled at 1000 hours, Monday, May 20, 2013, at the BNSF Memphis Division Office Conference Room, 5280 E. Shelby Drive, Memphis, TN, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to comply with instructions given to you by Greg Johnson and Jimmy Kovach on April 2, 2013, wherein you were reminded of your work schedule and required duties, your alleged absence from your assignment without proper authority and alleged falsification of payroll records on April 15, 16, 17, 18 and 19, 2013 and April 22, 2013, where you took excessive lunches, arrived late and/or left your assignment early. The date BNSF received first knowledge of this alleged violation is May 2, 2013.

Contact Greg Britz at XXX-XXX-XXXX or XXXX@ bnsf.com with any questions regarding this investigation, postponement or waiver.

Arrange for representation and any witnesses you may desire at the investigation as provided under applicable provisions of the Labor Agreement.

Please acknowledge receipt by affixing your signature in the space provided below.”

Investigation was held on May 20, 2013, and Claimant was notified by letter dated May 31, 2013:

“As a result of investigation held on Monday, May 20, 2013 at 1000 hours at BNSF Memphis Division Office Conference Room, 5280 E. Shelby Drive, Memphis, TN, you are hereby dismissed effective immediately from employment with the BNSF Railway Company for failure to comply with instructions given to you by Greg Johnson and Jimmy Kovach on April 2, 2013, wherein you were reminded of your work schedule and required duties, your alleged absence from your assignment without proper authority and alleged falsification of payroll records on April 15, 16, 17, 18 and 19, 2013 and April 22, 2013, where you took excessive lunches, arrived late and/or left your assignment early.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MOWOR 1.6 Conduct, MOWOR 1.13

Reporting and Complying with Instructions and MOWOR 1.15 Duty Reporting or Absence.

In assessing discipline, consideration was given to your personnel record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative. This letter will be placed in your personnel record.

Please arrange to return all Company property and/or Amtrak transportation passes in your possession. A check will be issued for any monies owed you.”

The Claimant, a short service employee at the Carrier's Memphis, Tennessee location was dismissed effective May 31, 2013 as indicated above.

The Organization strenuously argues that the Claimant's discipline was unjust and extremely excessive. The Union does cite what they contend are procedural issues, but the Board does not find any denial of the Claimant's due process rights.

The Carrier argues that there are no procedural errors and that the Carrier has, through a preponderance of evidence met their burden of proof. The Carrier has also advanced their position that the Claimant has attempted to defraud the Carrier by claiming time worked when he was not on the job. Further that the action by the Claimant has destroyed the employer/employee bond of trust.

The Board has, in detail, reviewed the record before us. Based on the record before us it is evident the Carrier has met their burden of proof, and the claim must therefore 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 20th day of December 2016.