

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32946
Docket No. MW-33125
98-3-96-3-561**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator C. Vasquez, Jr. for alleged violation of Safety and General Rule 564 and Maintenance of Way Rule 530 and 530 (b) on February 18, 1994 was arbitrary and excessive (System File B-M-338-K/MWB 94-11-08AA).**
- (2) As a consequence of the aforesaid violation, the Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for wage loss suffered."**

FINDINGS:

The Third 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, with approximately 20 years of service as a Group 1 Machine Operator was, at all material times herein, assigned to operate a diesel electric crane from a headquarters at Essex, Montana. While doing so the crane required repairs and the Claimant was directed to travel with the equipment to a repair shop in Havre, Montana, approximately 200 miles away. Claimant was required to remain with the equipment while it was under repair and was therefore entitled to meal and lodging expenses. Claimant arrived at the repair shop on February 14, 1994 and through February 17, 1994 the Claimant attempted to assist the crew in the repair shop. When he discovered however that there was little work that he could perform he left Havre and returned to his home the following day, a trip that lasted approximately three and one-half hours. Later that month when Claimant completed his timeroll for the week in question, he did not request payment for travel time on February 18, 1998, but rather submitted a request for payment for eight hours of straight time pay.

Following Investigation the Claimant was dismissed from service for falsifying the timeroll record described above.

The threshold question in this matter is joined by the argument of the Organization that because the Carrier has charged the Claimant with dishonesty it must meet its burden of proof with a higher quantum of evidence than it might when other charges are made against an employee. The Carrier on other hand argues that only one standard is required in the railroad industry, that of substantial evidence, and cites to numerous Awards for that proposition that stand in distinction to the Award cited by the Organization. Unfortunately, this Board finds that all of the cases cited by the Carrier and the Organization are less than helpful as none of them discuss the relative merits of requiring a greater quantum of proof. However, this is not an a matter of first impression in arbitral proceedings and we note that even outside the railroad industry there is something less than unanimity on this issue. Thus, in light of the two differing views on this matter and the split in authority, we believe that it is more useful to simply examine the record in each case of an allegation of this type to determine if we as a Board are convinced that there is enough evidence to determine whether the charge has been made out. As described below, we conclude that is the case in this matter.

We need not weigh the competing arguments of the Carrier and the Organization regarding the Claimant's entitlement to travel expenses or the allegation that there is a practice among employees to seek travel time. Such a task is unnecessary because the record clearly shows that the Claimant left Havre, Montana, of his own accord on

February 18, 1998 and that he claimed eight hours of straight time pay for a trip that required only three and one-half hours and that he did so knowingly. Thus, under no circumstances was he permitted to make a claim for eight hours of straight time pay when his trip required no more than three and one-half hours. Therefore, when he did so, a fact not disputed on the record, he submitted a false claim and under any quantum of proof his misconduct was established.

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 Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.