

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36377
Docket No. MS-36581
03-3-01-3-88**

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

(Michael A. Brown

PARTIES TO DISPUTE: (

(Southeastern Pennsylvania Transportation Authority

STATEMENT OF CLAIM:

“The authority violated Section 1005, Section 401(I), and others of the Labor Agreement with TCU dated June 24, 1993 as amended with memorandum on November 8, 1999, when it issued a suspension pending discharge to Michael Brown, Account Number 00435, clerk at Wissahickon Warehouse, Mechanical Department. The authority has issued said discipline without just cause, or proof through evidence.”

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.

The Claimant was employed as a Clerk at the Wissahickon Warehouse, Mechanical Department. During the week ending August 6, 1999, the Claimant was out sick for three days and worked two days. It is undisputed that he filled out his Employee Weekly Time Report to reflect the three days sick leave, signed it and presented it to his Supervisor, Maintenance Manager A. Matejik, for signature.

Matejik signed it and left it for the Claimant to fax to the Payroll Department at the Overbrook Maintenance Facility

In October 1999, the Claimant inquired about his vacation status. During the course of the review of the Claimant's remaining vacation entitlement, it was discovered that there was a discrepancy between the time records kept at the warehouse and those kept at the Payroll Department. According to the Employee Weekly Time Report that had been faxed to and kept on file in the Payroll Department (and that had been used as the basis for the issuance of paychecks) the Claimant had worked and been paid for 40 hours straight time for the week ending August 6, 1999, with no notation of or deduction for any sick leave taken. (At the time of the August 1999 absences, the Claimant had no remaining entitlement to paid sick leave.)

Following a formal Investigation, the Carrier concluded that the Claimant was responsible for altering the time record after it was signed and before it was sent to Payroll. On November 18, 1999, the Claimant was discharged for violation of General Work Rule 14 (Misuse/abuse of Authority property), Rule 18 (Payment errors) and Rule 19 (Time cards/payroll records).

The Claimant denies any wrongdoing. He admits that he was responsible for faxing the time sheet to Overbrook for that pay period because the Supervisor was out the day it was transmitted. He has no explanation for how the time sheet got changed. The Claimant also argues that because the copy of the time sheet retained in the Overbrook files does not bear a fax time stamp, it cannot be proved if and when it was sent from the warehouse. He admits that he was erroneously paid for 40 hours work that period, when he should have been paid for 16 hours, but claims that he did not notice the overpayment at the time because his paychecks were deposited directly into his bank account. He also asserts that errors in his pay—both overpayments and underpayments—had been made on prior occasions and had always been corrected without incident.

The Carrier asserts that the Claimant admits that he accepted the unwarranted payment and argues that the evidence is persuasive that the Claimant changed his time sheet after his Supervisor signed it. While the Carrier admits that payment errors had been committed in the past, it contends that previous errors were due to clerical mistakes, not falsification, and thus SEPTA corrected them without consequence to the employee. Such cases are not precedent for this case.

We find that the evidence is persuasive that the Claimant changed his time sheet after his Supervisor signed it. There is no other plausible explanation for the discrepancy. The Claimant had the opportunity to make the alteration because he was the one who submitted the signed time sheet to Overbrook in his Supervisor's absence. The fact that he accepted the overpayment without comment bolsters the conclusion that he was the one responsible. Because the Claimant is in a position of trust and is responsible for handling money, the Carrier was justified in terminating his employment.

The Agreement was not violated.

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 18th day of February 2003.