

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37294  
Docket No. SG-36996  
04-3-01-3-617**

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

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(The Burlington Northern and Santa Fe Railway Company**

**STATEMENT OF CLAIM:**

**"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe Railroad Co.:**

**Claim on behalf of L. M. Miller for compensation for all lost time and benefits and that the discipline be removed from the Claimant's personal record. Account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it dismissed the Claimant from service without the benefit of a fair and impartial investigation, and without meeting its burden of proving the charges against him in connection with and investigation held on August 31, 2000. Carrier's File No. 35-00-0022. General Chairman's File No. 003554. BRS File Case No. 11800-BNSF)."**

**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 at all material times herein working as a Division Relief Signal Maintainer in Stockton, California. On August 10, 2000 the Claimant did not report for work nor did he advise his supervisor that he would be absent that day. The following day his supervisor informed him that because he did not work on August 10, 2000 he could not claim any time on the payroll for that day. Subsequently, the supervisor reviewed payroll records for the day in question and discovered that the Claimant entered eight hours of pay for that day. As a result, the Claimant was dismissed from service but later reinstated. Thus, the claim herein is for restoration of time lost after he was dismissed.

The Organization first contends that the Claimant did not receive a fair and impartial Investigation because the Carrier did not supply the name of the Claimant's supervisor as a potential witness and because its Hearing Officer did not grant a recess when asked to do so by the Organization. We reject both of these arguments. First, the record reflects that the Investigation herein was conducted under Rule 41, not Rule 54, and that Rule 41 did not require the Carrier to identify its witnesses. With regard to the other argument, the record reflects that the Hearing Officer did in fact grant a recess, but did so only after he completed his witness examination. Under these circumstances the Claimant's right to a fair and impartial Investigation was not impaired.

With regard to the merits, there is no question that the Claimant did in fact claim eight hours of pay for a day on which he did not work. His defense is that he believed the supervisor was referring to overtime hours, when he directed the Claimant that he was not to claim pay for the day in question. We find however that this defense is contradicted by the Claimant's own testimony when, at the Investigation he had this exchange with the Hearing Officer:

"Q. Did he (the supervisor) say to not pay yourself for the 10<sup>th</sup>... ?

A. Not pay myself on the 10<sup>th</sup>.

Q. ... he said to not pay yourself?

A. For the 10th?

Q. For the 10th

A. Yeah."

Clearly by the Claimant's own admission the supervisor made no distinction between overtime and straight time but, rather, clearly and unequivocally directed the Claimant not to claim time worked for August 10, 2000. Despite that clear directive he did so and therefore the Carrier met its burden of proving the charges made against him.

**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 17th day of November 2004.