

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37583
Docket No. MW-37943
05-3-03-3-373

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) days suspension assessed Vehicle Operator R. L. Sutton for his alleged falsification of time documents for September 26, 2002 was without just and sufficient cause and excessive punishment.
- (2) Vehicle Operator R. L. Sutton shall now be exonerated of the charges, have the discipline removed from his record and be compensated for all wages, credits and benefits denied due to the unjustified suspension.”

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.

This case concerns Claimant R. L. Sutton, who was assessed a ten-day actual suspension as a result of his alleged falsification of his time document for September 26, 2002 in which he stated that he performed eight hours of service that day whereas he, in fact, did not work that day. The Claimant entered the Carrier's service on May 16, 2002 and holds seniority as a Vehicle Operator in the Maintenance of Way Department.

At about 6:30 A.M. on September 26, 2002, prior to the start of his shift, the Claimant contacted his immediate supervisor, Assistant Production Engineer J. C. Majeski to tell him that he would be late that morning. As it turned out, the Claimant was unable to get into work that day and did not call back. However, he reported to work as usual on Friday, September 27, 2002 and performed his assigned duties without incident. On Monday, September 30, 2002, the Claimant reported as usual. At approximately 12:00 P.M., however, he was removed from service by Engineer of Track K. P. Blackman.

Thereafter, on October 2, 2002, the Claimant was advised to attend an Investigation that would be held on October 10, 2002, based upon his alleged falsification of a time card. Following the Investigation, the Claimant was found guilty of falsely reporting that he had performed service for the Carrier on September 26, 2002. The Claimant was suspended from October 3 through October 16, 2002. The Organization filed an appeal, which was timely and properly processed pursuant to the contractual grievance procedure. The parties failed to resolve the matter, which now comes before the Board for determination.

The Carrier contends that the facts are not in dispute. At the Investigation, the Claimant testified that he did, in fact, submit a timesheet for September 26 even though he did not work that day. While the Claimant's explanation was that his conduct was unintentional and accidental, the Carrier argues that all employees are responsible for completing their timesheets accurately. The fact that he was not paid for September 26 because the payroll records were corrected in time is irrelevant. The Claimant completed and submitted a false timesheet, and is fortunate that more stringent discipline was not imposed.

In response to the Organization's contention that management abused its discretion by withholding the Claimant from service prior to the Hearing, the Carrier submits that Rule 25(b) states that "employees will be withheld from service pending investigation in situations where retention in service may create a hazard to the public, fellow employees or Company property, such as: violation of Rule G, dishonesty, insubordination, immorality, negligence in performance of duty, viciousness." The Carrier states that the Claimant was withheld from service because his alleged falsification of his time record was considered a serious violation that could have resulted in dismissal. Therefore, the Carrier was within its rights in withholding the Claimant pending the Investigation.

The Organization contends that the Claimant made an innocent mistake, based upon an unintentional oversight. As the Claimant testified:

"A. Well, if I can explain myself?

Q. You sure can. That's what we're here for.

A. Okay. That was a very, very, hectic, busy, stressful week. I was extremely busy. I didn't have time to really think. We had just gotten married that Saturday, you know. I got married on the 28th, and I was paying 95 percent of the wedding and I had to be there for a lot of the stuff that was being bought and taken care of, and I just, clearly, wasn't thinking. It's just point blank, I was not thinking. It was an accident. I had the timesheets ready, Louie called me on the radio and told me to hand them in, and I did just that, not thinking about it. I mean, it took me 7 years to get into this company, and I'm not going to blow it for one day's pay. That's just the bottom line."

The Organization submits that the Claimant knew that timesheets were monitored very closely and, therefore, it was unlikely that he would have purposely filed a fraudulent time record. While he marked his timesheet erroneously, his action was not a premeditated attempt to defraud the Carrier.

The Organization further argues that the Carrier's decision to issue discipline was not based on all of the facts. Given the testimony and evidence in the record, particularly in regard to the fax transmittal and time stamps on the relevant documents, it appears that the Carrier may have removed the Claimant from service prior to its receipt of his timesheet for September 26. Moreover, the Carrier violated Rule 25(b) by withholding the Claimant from service before his Hearing. In this regard, the Organization asserts that historically, Rule 25(b) has been invoked to ensure the safety of Carrier employees and property, typically where an employee has been charged with gross misconduct or moral turpitude. In the instant case, the charges against the Claimant did not warrant his removal prior to the Investigation. In the Organization's view, the Carrier's action reflects that it had prejudged the Claimant.

The record reveals that during the Investigation, the Claimant admitted that he submitted a timesheet in which he claimed pay for eight hours that he did not work. Although he denied any intention to defraud the Carrier, in the railroad industry the submission of false time records is a very serious offense which often results in discharge. Even assuming that he made an honest mistake, there is no doubt that he had an obligation to submit accurate timesheets. While the Organization emphasizes that the Claimant did not receive any pay for September 26, General Foreman D. Shirley testified without rebuttal that the Claimant brought the erroneous timesheet to his attention only after he was withheld from service. Thus, the Claimant was not as forthcoming as the Organization suggests.

As to the Organization's contention that the Claimant's removal prior to the Investigation constituted a due process violation, Rule 25(b) permits the Carrier to remove an employee prior to a Hearing in cases where the pending charges are serious and may result in dismissal. Rule 25(b) specifically cites "dishonesty" as the type of serious violation that justifies an employee's removal pending Investigation. In the instant matter, the Claimant's alleged submission of a fraudulent timesheet encompassed dishonest behavior and, therefore, gave the Carrier a valid reason to remove him from service pending the outcome of his Hearing. Such action by the Carrier did not constitute prejudgment of the Claimant's case; nor did it deny the Claimant a full and fair Hearing.

The Claimant summed up what happened by saying, "It was a mistake on my part. A huge mistake." Even assuming that this was true, his conduct was a serious violation of the Carrier's Rules. Given the nature of the offense and the Claimant's mere five and one-half months of service, the Carrier's imposition of only a ten-day suspension was a measured and reasonable response, perhaps in recognition of the Claimant's forthcoming marriage and personal distractions during the week in question. Regardless of the reasons for the Carrier's leniency, however, there is no doubt that the Claimant received the benefit of the doubt and could well have suffered more stringent discipline, up to and including dismissal.

For all of the foregoing reasons, the claim is 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 Third Division

Dated at Chicago, Illinois, this 24th day of August 2005.