

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39280
Docket No. SG-39146
08-3-NRAB-00003-050607
(05-3-607)

The Third Division consisted of the regular members and in addition Referee Joyce M. Klein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(BNSF 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 (BNSF):

Claim on behalf of K. Attakai, for the removal of any reference to this matter from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it assessed a 30-day record suspension and a one-year probationary period, after it failed to meet its burden of proof in connection with an investigation held on June 21, 2004. Carrier compounded this violation by restricting the Claimant’s defense, entering evidence not related to the charge and allowing the hearing officer to have multiple roles in the Claimant’s discipline. Carrier’s File No. 35 04 0051. General Chairman’s File No. 04-070-BNSF-172-A. BRS File Case No. 13300-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.

Claimant K. Attakai was issued a Level S record suspension of 30 days and a probation period of one year because he admitted entering into the computer authorization for ten hours of pay to a Signal Maintainer for work on June 14, 2004, a date that the Signal Maintainer had taken off as a sick day. The Claimant maintained that he entered the time with the expectation that the paid Signal Maintainer would make up the work on some future date. Although the record reflected that the Claimant's supervisor had permitted employees to make up a few hours with advance permission when time was needed for doctor's appointments, full days could not be made up and the Claimant acknowledged that he did not have permission to advance pay to the Signal Maintainer. The Claimant had previously received a warning letter explaining the need to accurately record the time of gang members.

The Carrier asserts that the Claimant had previously been given the benefit of the doubt with respect to pay entry discrepancies, but has not taken heed of the warnings. The Carrier contends that in light of the Claimant's admission that he entered ten hours of pay for a Signal Maintainer who was out sick, a Level S record suspension was appropriate and perhaps lenient.

The Organization claims that the discipline issued to the Claimant was excessive and unwarranted. The Organization maintains that during the course of the Investigation, the Hearing Officer allowed irrelevant information into the record, inserted his own assertions and assumptions into the record and interrupted the Claimant's representative during the questioning of a witness, thus rendering an impartial decision impossible. The Organization maintains further that the Hearing

Officer introduced prejudicial information and blocked the Claimant's representative from developing relevant facts.

The Claimant admitted that he entered ten hours of pay for a Signal Maintainer who was off sick without consultation or authorization with either the employee who stood to benefit or his supervisor. The Claimant had previously been warned not to engage in such conduct. Under such circumstances, the Claimant, who explicitly and purposefully paid another employee for time not worked, can be found to have attempted to deprive the Carrier of the ten hours of pay. Accordingly, the discipline is appropriate.

The Organization cites many perceived procedural deficiencies with regard to the conduct of the trial in this matter. Our review of the record of the Investigation shows that the Hearing Officer conducted a fair and impartial Hearing and permitted the Claimant's representative ample opportunity to develop all relevant facts.

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 21st day of July 2008.