

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 41520
Docket No. SG-41787
13-3-NRAB-00003-120001

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of G. O'Clair, for payment of all lost time, employment rights restored, and his record to be cleared of any mention of the discipline issued in a letter dated May 13, 2010, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the excessive discipline of dismissal without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on April 13, 2010. Carrier's File No. 35-10-0023. General Chairman's File No. 10-028-BNSF-119-D. BRS File Case No. 14557-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.

This case involves the dismissal of the Claimant for allegedly being dishonest and for a failure to perform required tests in a timely manner.

The Claimant, who is a monthly-rated Signal Maintainer, has assigned working hours of 7:30 A.M. to 4:00 P.M. As a monthly-rated employee, the Claimant is required to be available outside of his assigned hours during his regular workweek and on one "protect" day.

On March 2 and 3, 2010, the Claimant had deadlines to complete FRA-mandated inspections on four signal devices. Because the Claimant had had problems completing his inspections in the past (for which he received counseling) two signal Supervisors performed a "stealth remote audit."

On March 2, the Claimant was observed arriving at the Depot at 7:30 A.M. He left the Depot at 8:20 A.M. and returned home. He stayed at home until 9:10 A.M. when he left and drove back to the Depot. At 9:17 A.M., the Signal Trouble Desk contacted the Claimant regarding a problem with the signal system. However, the Claimant did not leave the Depot until 10:18 A.M. He finished handling the trouble call at 12:40 P.M. Instead of returning to the Depot, he drove to his home, where he arrived at 1:05 P.M. He remained at his home for approximately 50 minutes before going back to the Depot at 1:55 P.M. He stayed at the Depot for 41 minutes, and then again returned home at 2:48 P.M. where he remained until the end of his shift. Although the Claimant had one mandatory FRA inspection that was due on that day, he did not perform it.

On March 3, the Claimant worked a trouble call from 5:53 A.M. to 1:00 P.M. Thereafter, he was at his home from 1:30 P.M. until 2:30 P.M. He arrived at the Depot at 2:40 P.M., where he remained for 20 minutes. He left the Depot to return home at 3:00 P.M., and he remained at home for the remainder of his scheduled shift. After his shift was over, the Claimant did attend to another trouble call. On this day, the Claimant had three mandatory FRA inspections due.

The Carrier contends that, in addition to being absent from his assignment without authority and failing to comply with Signal Instructions TP-110, TP-107, and TP-382, the Claimant paid himself improperly on March 2 and 3, by claiming a full day of wages on both dates. And on March 2, he also claimed six hours of half time pursuant to Rule 45J for handling the trouble call at East Wiggins (on another Signal Maintainer's territory).

However, not only did the Claimant fail to account for the time spent at his residence on these dates, he was not entitled to six hours of half-time because he only spent approximately two hours and 30 minutes working off of his assigned territory on this trouble call. The Claimant did not contact his Supervisor to request time off from his assignment on either of these dates. Nor did he communicate with his Supervisor concerning a possible reason for his absence, or to make arrangements to complete the required FRA tests.

Because of the Claimant's unapproved absence from his assignment, tests were not performed during the time lines prescribed by the FRA.

On April 23, 2010, after agreed-upon postponements, an Investigation was held. On May 13, 2010, the Claimant was dismissed for his violation of Maintenance of Way Operating Rule 1.6 Conduct and for failing to comply with Signal Instructions TP-110, TP-107, and TP-382.

MOWOR 1.6 Conduct states that:

“Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome or
7. Discourteous

Any act of hostility, misconduct, or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated.”

The Organization contends that the Carrier failed to prove any Rule violation against this 17-year employee. It asserts that the FRA tests were done within the five-day leniency period which the Carrier allows. It further argues that the Claimant corrected his payroll and was not ultimately compensated for any time not allowed by the Carrier.

Finally, it asserts that the time at home was short, and that it was due to a serious family issue.

Conversely, the Carrier contends that there is no five-day leniency period and that the Claimant knew this well, inasmuch as he had been counseled about it previously. It asserts that the fact that the Claimant was not paid more than he should have been was not the issue – he fraudulently claimed pay for which he was not entitled. Had he not been under covert surveillance, this never would have been discovered. With respect to the family issues, it contends that the Claimant should have called a Supervisor to request time off. Time off is routinely granted for family emergencies. By not calling in, the Carrier was not afforded an opportunity to grant time off; nor was it afforded an opportunity to reassign the work to be performed by another employee.

After a complete review of the record, the Board finds that the Claimant did violate the Rules with which he was charged. The only reason any of the inappropriate actions were discovered was through the covert observations of Carrier Supervisors. The Claimant had a history of failing to perform the required tests in a timely fashion. Only after being confronted about his observed failures did he make excuses for his inappropriate behavior. This was too little, too late and does not insulate him from discipline. In view of all of the foregoing, the instant claim must be 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 19th day of February 2013.