

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41801
Docket No. SG-41312
13-3-NRAB-00003-100196

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Railroad Signalmen
(Providence and Worcester Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Providence & Worcester Co.:

Claim on behalf of P. Bertoncini, for reinstatement to his former position with compensation for all time lost, including overtime, with his seniority and benefits unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article 13, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on November 24, 2008. General Chairman’s File No. WHK-62-154-1108. BRS File Case No. 14296-P&W.”

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 first employed by the Carrier on April 4, 1979. At all times relevant to this dispute, he was assigned either as a Test Man or a Signal Maintainer. By letter dated November 11, 2008, Director of Engineering Bernard A. Cartier informed the Claimant that his employment was terminated effective November 14, 2008. In addition to citing 20 dates on which the Claimant was absent either a full or partial day, the letter charged the Claimant with quitting work early on November 7, 2008 and submitting false records in the form of his timesheet, which indicated he worked for eight hours. Cartier wrote that he had observed the Claimant driving a Company vehicle at 11:50 A.M. at least 40 miles from where the Claimant had stated he was working. According to the letter, the Carrier had questioned the Claimant about his activities and he first said he had been working with another employee in Woonsocket. When the other employee denied working with the Claimant, he then indicated that he had gone to RCA Optical in Webster that afternoon to pick up his safety glasses. The letter concluded by referencing seven disciplinary letters the Claimant had been issued for absenteeism between December 4, 1997 and February 16, 2008.

The Claimant requested a Hearing in connection with the termination letter. The Hearing was held on November 24, 2008. By letter dated January 13, 2009, Thomas W. Lewis, Chief Engineer – Track, determined that the Claimant's termination was warranted.

After reviewing the record before it, the Board has concluded that the Carrier's charge against the Claimant is supported by substantial evidence. The Claimant's 20 days of absence during an eight-month period is, by any standard, excessive. We note that one-third of those absences occurred on either a Friday or a Monday. In addition, he was absent on two Thursdays that preceded Fridays on which he was also absent.

Aside from his excessive absenteeism, the record reflects that the Claimant falsified his work records to indicate that he had worked a full eight hours on

November 7, 2008. The evidence, however, shows that he was not at the work locations noted on his timesheet. When questioned about his whereabouts, he made a false statement to Director of Engineering Cartier. The Claimant had previously been cited by the Carrier for not being truthful when calling in sick.

The Organization refers to the Claimant's 32 years of service with the Carrier, and notes it has tolerated his absenteeism for seven years. We do not believe this means the Carrier must continue to tolerate it. It is apparent that the Carrier has exercised leniency with the Claimant in the past, and has suggested that he contact the Employee Assistance Program on at least two occasions. Despite repeated warnings that his continued absenteeism could result in his discharge, the Claimant made no effort to improve his attendance. The charge against the Claimant is even more severe than excessive absenteeism, because it includes the falsification of time records, which is, in itself, generally a dismissible offense. The Board finds, therefore, that there is no basis for mitigating the discipline imposed by the Carrier. Granting leniency is the sole prerogative of the Carrier, and it is obvious that door has closed.

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 December 2013.