

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22112  
Docket Number MW-22141

Rolf Valtin, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Louisville & Nashville Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Ballast Regulator Operator J. F. Brush was without just and sufficient cause and on the basis of unproven charges (System File 1-25(9)/D-106469 E-306-11).

(2) Claimant Brush shall be reinstated to service, his record cleared of the charge and he shall be paid for all time lost, all in conformance with the first paragraph of Rule 27(f)."

OPINION OF BOARD: The claimant, a Ballast Regulator Operator with about six years of service with the Carrier, was discharged for falsifying time reports for January 2, 9 and 15, 1976. He did not work at all on the first of these days, and he worked 3 hours on each of the latter two days. He submitted time reports showing 8 hours for each of the three days.

It goes without saying that we would ordinarily uphold the discharge penalty for an offense of this nature. In this instance, however, we accept that something less than straightforward fraud was involved, and we are therefore converting the discharge to a long-term suspension.

We see no good reason for declining to accept the claimant's version as to what prompted him to put in for the unworked hours. On the one hand, his record with the Carrier is exemplary -- he had risen from Track Repairman to Assistant Foreman to Foreman, and he did not incur a single disciplinary problem in his employment with the Carrier. On the other hand, he has from the outset fully admitted the false entries -- there has been no resort to evasion or half-truths.

At the time he made the false entries, the claimant had spent about six weeks on a job which permitted him, on Carrier time, to leave the job and drive to a motel for lunch, for a roundtrip drive of about ½-hour duration. He did not avail himself of this benefit

6 and thus, to the clear advantage of the Carrier, kept the job going over the lunch period. The hours which he falsely claimed on the time reports were roughly the equivalent of the hours he had in effect donated.

6 It does not follow that the claimant committed no offense in making the false entries. To the contrary, the rule on this property is that the claiming of compensatory time requires the prior approval of Supervision. The claimant admits his awareness of the requirement at the time he made the false entries.

7 But we do believe that it would be wrong to dispose of the case as if it involved plain cheating. And we further believe that, in the light of the claimant's fine record with the Carrier, the discharge penalty ought not to be imposed for the offense which the claimant did commit. We are directing his reinstatement without impairment of seniority rights, but without reimbursement for the wages lost.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the discipline was excessive.

A W A R D

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1978.