

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30258
Docket No. SG-30936
94-3-92-3-816

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Montana Rail Link, Inc.

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen (BRS) on the Montana Rail Link (MRL):

Claim on behalf of M. W. McIntyre and E. S. Smollack for reinstatement to service with seniority unimpaired and all benefits restored, and for compensation for all time lost from August 4, 1992, until reinstated, account Carrier violated the current Signalmen's Agreement, particularly Article 13, when it failed to meet its burden of proving its charges against the Claimants and imposed the harsh and excessive penalty of dismissal from service."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

On Friday, July 3, 1992, Claimants were assigned to Signal Crew #1961 working out of Helena, Montana. The regular work hours of this crew are 7:30 A.M. to 4:00 P.M., Monday through Friday. On several occasions between the hours of 2:45 P.M. and 3:50 P.M. on that date, the Signal and Communications Supervisor attempted to contact Claimants directly via the carrier's Mobile Radio Access System (MRAS), but received no response.

Following communication with the Helena Signal Shop, the Supervisor determined that Claimants' whereabouts was not known, and they were apparently no longer on Carrier's property, notwithstanding that their shift was not yet over. On Tuesday, July 7, 1992, the Supervisor confronted Claimant Smollack concerning the events of the previous Friday. As a result of his conversation, both Claimants were instructed to attend a fact finding Hearing to determine their responsibility, if any, in connection with allegedly falsifying their time slips and improperly absenting themselves from work on the afternoon of July 3, 1992.

A Hearing was held on July 22, 1992, following which Carrier determined that Claimants falsified time slips for their service on July 3, 1992, and were absent without proper authority. Claimants were then notified that they were dismissed from Carrier's service.

The record before the Board is convoluted and includes testimony from at least one witness who admitted to lying to the Supervisor when asked about Claimants' whereabouts. On the whole, however, the Carrier established persuasively that Claimants had left Carrier's property before the termination of their shift at 4:00 P.M., yet claimed a full day's pay for their shift. Accordingly, the Board will not disturb Carrier's assessment of discipline in this case.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.