Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 30805
Docket No. SG-31184
95-3-93-3-206

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Railroad:

Claim on behalf of R. E. Mosely for reinstatement to service with compensation for lost time and with full restoration of seniority and benefits, and removal of the record of disciplinary action from the Claimant's personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it failed to conduct its investigation of charges against the Claimant within the prescribed time limits, failed to provide the Claimant with a fair and impartial hearing, and abused its discretion in disciplinary matters by imposing the harsh and excess discipline of discipline of dismissal from service." Carrier's File No. 9SE 92-05-11. General chairman's File No. S-6-92. BRS File Case No. 8977-BN.

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all 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 herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was employed by the Carrier as a CTC Signal Maintainer. He was assigned to Mill Creek, Oklahoma.

On January 6, 1992, Claimant left work. The evidence is that Claimant was absent to serve as a witness in a court case not involving the Carrier. He stated that the Carrier's Special Services Department and two Carrier officers had known in advance that he would be absent and that he had attempted to contact his supervisor to obtain his approval, but could not reach him.

Claimant also testified that he took a day of his authorized vacation on the 8th and that his supervisor had likewise been made aware in advance of his absence on the 8th from the other employees with whom he had made arrangements. Again, he stated that he had personally attempted to contact his Supervisor.

It is not disputed that the proper official to approve Claimant's absences was his supervisor and that Claimant did not have approval for either absence. However, Claimant stated, and his supervisor confirmed, that there was a practice in effect of letting the adjoining Signal Maintainer and the Wire Chief know when a maintainer would be off and then attempting to contact the supervisor.

The Carrier denied advance knowledge of Claimant's absences. Testimony indicated that Claimant had not left any advance message on the supervisor's message machine, paged him or had other Carrier officials attempt to contact him. According to the supervisor, only at the end of the day on January 6 did he find out that Claimant had been absent, when dispatch was unable to reach him to repair malfunctioning gates. The supervisor did not give Claimant permission to be absent on vacation on January 8, nor, according to his testimony, did he know of Claimant's absence until January 17, when he received Claimant's payroll records.

On January 17, Claimant turned in his Federal Hours of Service Log and Labor Distribution Form, a Federal Railroad Administration document, and a payroll form, which covered the days at issue. Those Forms listed him as being present and working for eight hours on January 6. Claimant testified that he filled out the days in question from memory, without access to his daily work reports, which were in his Company vehicle. He testified that he was pressed for time and simply made a mistake, which he never had an opportunity to check.

Insofar as the record indicates, Claimant had no prior history of filing erroneous reports. He had received one letter of reprimand in 1987 for leaving the property prior to the end of the shift and a second letter of reprimand in 1988 for not being available on a paid standby day.

The Carrier summoned him to two investigatory hearings held

January 25, 1992 to develop facts and determine responsibility in connection with his absence from duty on the days in question without proper authority and his falsification of tour of duty records.

The Carrier determined Claimant guilty of the charges and, by letter dated January 31, 1992, censured him for his absences and dismissed him from service for falsification of the FRA Forms.

The Organization protested imposition of the discipline. The claim was progressed in the usual manner, without resolution; and was brought to this Board.

The Carrier argues that it met its burden to prove Claimant's guilt by substantial evidence and, conversely, that the Organization did not establish that the Carrier acted arbitrarily and capriciously in censuring and dismissing him. It denies that it had knowledge either of Claimant's January 8 absence or his falsification of records until January 17, therefore, the Investigation was held within the time limits as required by the Agreement. The Carrier asserts that the Claimant's efforts to contact his supervisor were incomplete and inadequate and that he was absent without leave, an offense clearly held in the industry to warrant dismissal. The Carrier denies any violation of the time limits or of Claimant's due process. It urges that the claim be denied.

The Organization argues that the Carrier violated the applicable Agreement by failing to conduct the investigation within the prescribed time limit, since it asserts that the Carrier had advance knowledge of his absences. It contends, therefore, that the Carrier failed to investigate within the required 15 day time period. The Organization also argues that it failed to provide the Claimant with a fair and impartial hearing, and that the Carrier's assessment of the penalty of dismissal was arbitrary and excessive, in that his absence from work was consistent with prior practice and his erroneous completion of the Forms was not established to be intentional. The Organization urges, therefore, that the claim be sustained.

The Board has considered Claimant's arguments that the Carrier's investigation was untimely. We are not persuaded with respect to Claimant's January 8 absence. The record indicates that Carrier became aware of Claimant's January 8 absence and of his inaccurate entries on the FRA forms only on January 17, rendering the investigation with respect to Claimant's January 8 absence and the inaccurate forms not untimely. However, the Board concludes that the charge that Claimant was AWOL on January 6 is untimely, since Carrier was aware of Claimant's absence on that date.

There is substantial evidence that Claimant failed to obtain the required permission from his supervisor for his January 8th absence and that he failed to make sufficient effort to contact him. The Board is not persuaded that the informal arrangement allowing signal maintainers to cover for each other is a substitute for obtaining permission to take vacation. The Board is not persuaded that the letter of censure imposed by the Carrier in consequence of his absence on January 8th was arbitrary or excessive.

Claimant was responsible for the accurate completion of the FRA Forms, a responsibility of which the Carrier had advised employees through Carrier Maintenance of Way Rule Form 15125 and Instruction Bulletin H-3, Sec. 1.4. Claimant's entries on the FRA Forms for January 6th are incorrect and violated his obligations in that regard.

Claimant was also responsible for accurately completing his payroll form. Claimant's failure to do so resulted in a claim for pay for time he did not work. The Board is not persuaded that Claimant was intentionally attempting to falsify his payroll. He had informed the Carrier of his January 6th absence, rather than having concealed it. However, although there were some extenuating circumstances which reasonably interfered with Claimant's ability to make accurate submissions, there is no indication that he attempted to amend the forms when he later had access to the materials in his truck.

The Board concludes that Claimant's violations cannot be treated as simple mistakes, without consequence. However, the Board takes note of his 19 years of service and concludes that the penalty of dismissal was excessive. The Award so reflects.

Claimant failed to obtain permission to take off January 8, 1992 and engaged in improper conduct by filling out payroll and FRA Forms, claiming to have worked three hours on January 6 during time he was off. However, the Board holds that the penalty of dismissal is excessive. The dismissal shall be rescinded and Claimant returned to service, but without back pay or benefits. Claimant's records shall be amended so to reflect.

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

National Railroad Adjustment Board
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of April 1995.