

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32955
Docket No. MW-33753
98-3-97-3-230**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc. (formerly The Baltimore
(and Ohio Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Foreman T. J. McCloskey for his alleged conduct unbecoming an employe when he inadvertently provided false information on a payroll was without just and sufficient cause and excessive punishment [System File B-D-1678/12(96-0794) BOR].**
- (2) Foreman T. J. McCloskey shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."**

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.

On April 8, 1996 the Claimant, with 26 years of established seniority, was given Rule 707 authority to perform certain B&B work from 8:00 A.M. until 2:30 P.M. At some point during the day the Claimant spoke to Supervisor Carnes, but neglected to tell him that it would be necessary for him to leave early that day so that he could attend a court date with his son. At 9:30 A.M., once the gang was secured and actively at work, the Claimant delegated his Rule 707 authority to another employee and left for the day.

On April 11, 1996 another employee informed Supervisor Carnes that the Claimant had left early on the day in question, but because neither that employee nor Carnes knew what time the Claimant in fact left, Carnes completed the payroll for the day in question as though the Claimant had worked the ten hours that he had been scheduled to work. On April 15, 1996 the Claimant reviewed the payroll and, despite correcting errors relating to the hours worked by other employees, he verified the payroll with the entry that he worked his scheduled hours on April 8, 1996.

Following an Investigation the Carrier dismissed the Claimant pursuant to the charges set forth above.

The Organization contends that the Carrier failed to carry its burden of proof, for the record does not establish that the Claimant intentionally claimed hours that he did not work. Rather, the Organization asserts that the Claimant simply made a mistake. Moreover, the Organization argues that dismissal is inappropriate in light of the compelling reason for the Claimant's early departure and because the payroll error was noticed before the payroll was processed. Thus, the Claimant did not unjustly enrich himself at the Carrier's expense.

We do not agree with the Organization's arguments. First, the record is clear that the Claimant had the presence of mind to correct some erroneous entries on the payroll, but failed to do so when it came to his situation. Thus, the clear inference from this fact is that the Claimant did so intentionally. Moreover, the record also establishes that the Claimant never came forward with the truth with regard to the number of hours he actually worked on the day in question until the error in the payroll was discovered. Again, this leads to an inference of intentional concealment. In light of these conclusions, we do not find that the fact that the error was discovered before the Claimant was paid mitigates against any conclusion that the Claimant was guilty of the charges made against him.

Similarly, although the reasons for the Claimant's absence might have been compelling, they go only to his failure to work the shift as scheduled. He was not charged with that offense. Therefore, that fact does not lead us to conclude that dismissal was inappropriate.

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 23rd day of November 1998.