

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35974
Docket No. MW-36388
02-3-00-3-629**

The Third Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(Montana Rail Link, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. M. D. Belderrain for alleged violation of Montana Rail Link General Safety Rule G-1-1e and the General Code of Operating Rules 1.4, 1.6, 1.13 and 1.15 in connection with the charges of leaving work without proper authorization and falsifying a time roll for time on June 23, 2000 was unwarranted on the basis of unproven charges and in violation of the Agreement (System File MRL-168).**
- (2) As a consequence of the violation referred to in Part (1) above, Mr. M. D. Belderrain’s record shall be cleared of the charges leveled against him, he shall be reinstated to service 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 Friday, June 23, 2000, the Claimant was scheduled to work his regular 7:30 A.M. to 4:00 P.M. shift as Acting Foreman of the Big Timber Section. Beginning at approximately 9:15 A.M., the Chief Engineer's Administrative Assistant unsuccessfully attempted to contact the Claimant to relay some information to him. Later that afternoon, the Carrier learned that the Claimant left work earlier in the day for a personal appointment and did not return.

There is no dispute that the Claimant failed to notify or obtain permission from supervisory authority before leaving his assignment. There is also no dispute that the Claimant submitted a time card seeking pay for a full eight hour shift.

On Monday, June 26, the Claimant was asked about the situation by the Assistant Roadmaster. He acknowledged that he had to leave early on Friday and stated that he intended to submit only six hours on his time card for that day. The six hours, the Claimant stated, were partially attributed to time worked on June 23 and the remaining time consisted of compensatory time earned. After the meeting with the Assistant Roadmaster, the Claimant immediately submitted a corrected time card reflecting six hours claimed for June 23, 2000.

The Claimant was subsequently directed to attend a fact finding to determine whether he left work early without proper authorization and falsified his time card for time he did not work on June 23, 2000. Following the fact finding on July 6, 2000, the Claimant was dismissed from the Carrier's service.

The Carrier contends that the evidence adduced at the Hearing clearly substantiates the Claimant's guilt and supports the Carrier's decision to remove him from service. Not until the Claimant was confronted by the Assistant Roadmaster did he "remember" to correct his time card, the Carrier points out. Therefore, the Hearing Officer correctly concluded that the Claimant's self-serving testimony that he inadvertently forgot to change his time card was properly discredited. In addition, even the corrected time card - showing six hours worked on June 23 - was refuted by the records presented at the Investigation. All of these factors militate against the conclusion that there was innocent intent in this case. Moreover, the Claimant conceded that he left work without contacting or even attempting to contact a supervisor, further compounding the seriousness of his misconduct.

The Carrier maintains that these were egregious violations, not only of Carrier Rules, but also of the basic expectation in the workplace that employees conduct themselves in an honest and trustworthy manner. By abandoning his assignment and submitting a fraudulent time sheet in order to collect pay to which he was not entitled, the Claimant demonstrated that he should not be retained as an employee in the Carrier's service. Accordingly, the Carrier requests that the claim be denied in its entirety.

The Organization argues that the Claimant simply made an error when he initially claimed eight instead of six hours pay for June 23, 2000. The record in this case demonstrates an absence of fraudulent intent on the part of the Claimant. In the Organization's view, the Carrier was unable to meet its burden of establishing that the Claimant knowingly filed a false time card or that he was doing anything other than recommended procedure for taking time off in lieu of overtime worked. Moreover, even if the Claimant was at fault for not properly requesting permission to leave early on June 23, 2000, the penalty of discharge was unduly harsh and unwarranted under these facts.

The Board reviewed the record carefully and finds that there is sufficient evidence to warrant the imposition of discipline short of dismissal, for several reasons.

First, the record is clear that the Claimant did not notify supervisory authority prior to leaving the work site on June 23, 2000, and while that charge is a serious one, there are circumstances present that must be considered in mitigation.

The Claimant learned on the evening of Wednesday, June 21 that he was to report to his probation officer on Friday, June 23 between 10:00 A.M. and 2:00 P.M. The Claimant's supervisor, the Assistant Roadmaster, did not report to his office on June 22 or 23, nor did he telephone headquarters to check with the Claimant on June 22 as was customary. The Assistant Roadmaster acknowledged in his testimony that he had not informed the Claimant who to call in his absence. While the Claimant certainly could have exercised more initiative in tracking down a supervisor to obtain authorization to leave early on June 23, the facts suggest that discharge was too severe given the absence of the Supervisor and the lack of an established procedure for requesting time off in his absence.

Second, while the Board is mindful of the utmost importance of honesty in the workplace, and we believe that time card falsification, where proven, is akin to theft,

the Board is equally dedicated to the proposition that such a serious transgression must be clearly proven and that all surrounding circumstances must be taken into consideration in determining whether the discipline imposed was commensurate with the actual misconduct.

In this particular case, although the Claimant initially claimed eight hours pay for June 23, he testified that he had filled out the time card earlier in the week, as was his practice, before he knew he had to leave early on June 23, and then forgot to adjust his hours before he left that day. As soon as he was reminded about the error, he immediately submitted a time card for pay that he calculated was due him for time worked and accumulated compensatory time worked during the week. Although there is some dispute as to how much compensatory time was earned and how many hours the Claimant actually worked on June 23 before leaving for his appointment, in the final analysis the Board is not satisfied that the record either exonerates the Claimant or establishes his guilt. Despite the Carrier's suspicions, there is lacking here the substantial evidence necessary to establish that the Claimant intended to deceive the Carrier by submitting a false time card.

While dismissal is excessive under these circumstances, it must be remembered that the Claimant set this chain of events in motion when he failed to track down a Supervisor to explain his appointment on June 23 and to discuss the amount of time he should report for that date. In addition, while "theft of time" has not been convincingly proven, the Claimant's glaring carelessness in submitting an incorrect time card is a factor that cannot be overlooked in fashioning a proper remedy. On balance, we do not believe that the Carrier should bear the financial onus for backpay on this record. The Board therefore finds that the Claimant shall be reinstated with seniority and other rights unimpaired, but without pay for time lost while out of service.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

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 8th day of March, 2002.