

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36307
Docket No. MW-36481
02-3-00-3-756

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Santa Fe Railway
((former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. A. P. Milne on December 6, 1999 for alleged '*** violation of Maintenance of Way Operating Rule 1.6 part 4.' was improper, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File S-P-750-H/11-00-0050 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, '*** The Carrier must immediately restore Claimant to the service of the Carrier, remove any and all mention of the discipline from Mr. Milne's record and make Mr. Milne whole for any and all losses.'"**

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.

The Claimant was working as a Group 3 Operator on Regional/System Gang RP-21 when this dispute arose. Employees on such gangs, the Claimant included, are entitled to a weekend travel allowance. Specifically, Article XIV of the 1996 National Agreement sets forth:

"At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip."

There is no dispute that the Claimant worked on October 15, 1999. Shortly thereafter, Mr. Milne submitted a weekend travel allowance form claiming that he had traveled 3,020 round trip miles between Fort Morgan, Colorado, and Clinton, Washington, on October 15 - 17, 1999.

On October 25, 1999, the Carrier sent the Claimant the following notification:

"Arrange to attend investigation at the Burlington Northern Santa Fe Colorado Division Office on Monday, November 1, 1999 for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged falsification of weekend travel allowance form, claiming travel home allowance from Ft. Morgan, CO to Clinton, WA and return to Ft. Morgan on October 15 through 17, 1999, and allegedly claiming travel home allowance and not driving the trip home, while working as a machine operator on Steel Gang RP21 at Ft. Morgan, CO."

The Investigation was postponed, at the Organization's request, and later held to completion, on November 8, 1999. On December 6, 1999, the Claimant was informed that he had been found guilty of violating Rule 1.6 part 4, resulting in the discipline of dismissal.

The Organization protested the Claimant's discharge maintaining at the outset that the Claimant had not received a fair and impartial Hearing. Regarding the merits of the dispute, the General Chairman contended that:

"Mr. Milne was originally dismissed in a 'group' dismissal action of twenty-one employees assigned to System-Region Gang RP-21 for allegations arising

while the Gang was working on the Colorado Division. This 'group' dismissal was a blatant Carrier attempt to force the Organization to negotiate new terms and conditions for Week-End Travel Allowance, a failed strategy fabricated by the highest ranking officers of this Carrier.

* * *

Claimant testified that he did travel to his home the weekend of October 15. Claimant testified that he traveled at rates of speed that would have allowed him to make the trip well within the time frame of departure at 4:00 P.M. on Friday, with a return to Colorado by 3:00 A.M. Sunday morning. The Carrier provided absolutely no evidence that Claimant did not make the trip as he described. While the Carrier may doubt or suspect that Claimant did not travel as he described, suspicion or conjecture does not constitute fact or evidence."

For his part, the Claimant maintains that he left work at four in the afternoon on October 15, drove immediately to his home in Clinton, arriving there at approximately 8:00 A.M. on October 16, 1999. Shortly thereafter, the Claimant asserts that he left home because of "marital problems." Then, according to the Claimant, he drove "straight back" to Fort Morgan, arriving at approximately 2:30 A.M. on Sunday, October 17, 1999.

In his denial of the claim the Division Superintendent contended that the Organization's procedural objections were without merit. With regard to the merits of the issue, the Superintendent stated that "strong circumstantial evidence" indicated that the October 15 - 17, 1999 travel had not been performed as the Claimant had reported. Specifically, the Carrier denied the claim due to the following:

"The circumstantial evidence that leads Carrier to conclude that the Claimant never traveled from Ft. Morgan, Colorado, to Clinton, Washington, and back on October 15 - 17, 1999 is the fact that Claimant was arrested in Fort Morgan, Colorado, at around 3:17 A.M., on October 17, 1999. Moreover, when Claimant was arrested, he was riding in a car with frosted over windows and had a passenger and twelve pack of beer in his car. The Carrier does not believe that the Claimant traveled 3020 miles, picked up a passenger and some beer, and was stopped long enough for his car windows to frost over in the 35 hour period from 4:00 P.M. on October 15, 1999 when the Claimant got off work, until 3:00 A.M., when the Claimant was arrested."

At the outset, the Organization asserts that the Claimant was denied an fair and impartial Hearing because he was called as the first person to testify. However, the Agreement does not specify any particular order that witnesses must be called, nor are we persuaded that the Claimant was prejudiced in any way when he was called first.

Turning to the merits of this dispute, the Claimant steadfastly maintains that he made the 3,020 trip from Fort Morgan to Clinton on October 15 - 17, 1999. However, a review of the record evidence supports the Carrier's determination that the Claimant did violate Rule 1.6 part 4 of the Agreement when he deliberately and knowingly filed a false written expense report. In fact, the Claimant signed the report attesting: "I certify the mileage stated above is a true and accurate report of the actual highway mileage traveled by me."

The record clearly demonstrates that the Claimant submitted a falsified travel allowance form for miles which he did not actually travel, thereby violating Rule 1.6, part 4 of the Agreement. Premised upon that serious nature of such a Rule violation, the Claimant was appropriately disciplined. This claim is denied.

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 13th day of November 2002.