

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36308
Docket No. MW-36482
02-3-00-3-757

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 Employees
(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 Foreman M. L. Ashton for his alleged dishonest behavior and failure to give factual reports concerning damage to Danella Vehicle #A6702D on May 28, 1998 was without just and sufficient cause and based on unproven charges (System File C-98-D070-13/MWA98-11-27AA BNR).
- (2) Foreman M.L. Ashton shall now be reinstated to service with seniority and all other rights unimpaired and 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 the morning of May 28, 1998, the Claimant was working as Foreman of Gang CG13 when he backed vehicle A6702D into a parking space across from the Frog Shop at Douglas, Wyoming. However, as the Claimant backed into the space, he hit a tree which dented the back of the vehicle. Soon thereafter, the Claimant, who did not report the collision, was summoned to an Investigation regarding the incident. On July 7, 1999, the Claimant was informed that as a result of his “dishonest behavior, failure to

give factual reports and failure to inspect areas to the rear making sure that area is clear of obstructions before backing vehicles" he was being dismissed from the Carrier's service.

The Organization protested the discipline maintaining the Carrier had violated Rule 40 of the Agreement account the Claimant, nor his representative received notice of the charges leveled prior to the June 10, 1998 Investigation.

With respect to the merits of the issue, the Organization alleged that the Carrier "failed to present credible evidence to clearly and convincingly show that Claimant was dishonest." The General Chairman noted that the only eyewitness to the collision, Operator Skinner, had "contradicted himself," and that the Carrier should have relied more on the Claimant's "candid" testimony.

The Carrier denied the claim, contending that the Claimant "knew he hit the tree and lied about it." In that connection, the Carrier noted that when confronted, the Claimant "changed his story" more than once and attempted to deceive the Carrier about how the truck he was driving had been damaged.

Further, the Carrier pointed to the lone eyewitness' account, that of Welder Skinner, in which he stated unequivocally, that there was a "loud crunching sound" when the Claimant backed into the tree. Thereafter, instead of getting out to check his vehicle, the Claimant merely "assumed" everything was alright and "ignored" the "loud crunching sound," according to the Carrier. Finally, the Carrier noted that employees are expected to be truthful and contended that the Claimant was discharged because he was not.

There are two basic questions before the Board. Did the Carrier develop substantial credible evidence that the Claimant damaged his truck and then attempted to deceive the Carrier about the nature of the accident? If yes, was dismissal in this case appropriate? To both of those questions we must answer in the affirmative.

A review of this record reveals the following: On the morning of May 28, 1998, the Claimant backed his company owned vehicle into a parking spot, and in doing so, struck a tree which dented the back of the vehicle. Welder Skinner, who was standing approximately 100 feet away, observed the collision and heard a "loud crunching sound" and promptly reported same to his supervisor. The Claimant, on the other hand, ostensibly denied having any knowledge of the collision, later claiming that it must have been "a hit and run incident" that occurred in the parking lot of his hotel. Later, when confronted with the eyewitness, the Claimant modified his story to allow for the "possibility" that he struck the tree "without knowing it."

In that connection, the Carrier did not simply rely upon Skinner's testimony regarding the collision. According to the Carrier's unrefuted testimony, including

detailed pictures which were studied during handling on the property, the dent in the tailgate of the truck is consistent with hitting the tree in the parking lot.

Clearly, the Claimant did not properly report the May 28 collision, nor was he forthcoming when questioned. In fact, in order to shirk responsibility, the Claimant contrived a story in an effort to explain what actually happened to his truck, and when faced with eyewitnesses to the event, the Claimant offered a belated semi-admission regarding the incident.

It is clear that the Claimant knowingly attempted to deceive the Carrier about the true cause of the dent in the tailgate and in doing so violated both Rules S-28.2.7 and S-28.6. Dishonesty is a very serious offense, and in the circumstances, dismissal is appropriate.

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.