

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 37378
Docket No. MW-36869
05-3-01-3-468**

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(BNSF Railway Company (former Burlington Northern
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) day record suspension and three (3) year probation period beginning July 17, 2000] imposed upon Mr. D. M. McClendon for alleged violation of Rule 1.15 of the BNSF Maintenance of Way Operating Rules in connection with charges of absence from work without proper authority on July 17 through 20, 2000 while assigned as section foreman at Garretson, South Dakota was arbitrary, capricious, without just cause, excessive and in violation of the Agreement (System File T-D-2141-B/11-00-0548 BNR).**
- (2) The dismissal of Mr. D. M. McClendon for alleged violation of BNSF Maintenance of Way Operating Rule 1.6 for alleged falsification of time roll for July 9 and 11, 2000 while assigned as section foreman at Garretson, South Dakota was arbitrary, capricious, without just cause, excessive and in violation of the Agreement (System File T-D-2142-B/11-00-0549).**
- (3) As a consequence of the violation referred to in Part (1) above, Mr. D. M. McClendon shall now ‘. . . be paid for all time lost (including overtime) during the suspension, made whole for any and all benefits, and his record cleared of any reference to**

any of the discipline set forth in the August 15, 2000 letter from Mr. M. G. Heyns, Trainmaster.'

- (4) As a consequence of the violation referred to in Part (2) above, Mr. D. M. McClendon shall now ' . . . be reinstated to his position, paid for all time lost (including overtime), made whole for any and all benefits, and his record cleared of any reference to any of the discipline set forth in the August 15, 2000 letter from Mr. M. G. Heyns, Trainmaster."

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.

During the period of July 1 through July 17, 2000, Claimant D. M. McClendon was assigned as a Section Foreman on the Garretson Section. On July 17, 2000, District Roadmaster T. F. Neeser, who was the Claimant's supervisor, received a call from the Timekeeper in Topeka advising that Timekeeping had not received the first period July payroll for the Garretson Section. Upon Investigation, Roadmaster Neeser discovered that the Claimant had neither completed nor submitted time for the members of his section for the dates of July 13 and 14. Neeser also learned that the Claimant had indicated on the payroll that he had worked overtime on July 9 and 11, when he had not worked any overtime on those dates.

Roadmaster Neeser was unable to discuss this matter with the Claimant because he was not at work during the period of July 17 through July 20, 2000. Apparently, the Claimant was incarcerated during that period, although he did leave a voicemail message for Neeser on July 17, explaining his absence. The Carrier did not dispute the Claimant's representation that the charges, or reasons for his incarceration were dismissed.

On August 4, 2000, the Carrier held an Investigation for the purpose of ascertaining the facts and the Claimant's responsibility, if any, for (1) the alleged falsification of the timeroll for July 9 and July 11, 2000, and (2) the Claimant's alleged absence from duty without authority from July 17 through July 20, 2000. On August 15, 2000, the Claimant was advised that based on his unauthorized absence from work during the period of July 17 through July 20, 2000 in violation of MWOR 1.15, he was issued a Level S 30-day suspension and a three-year probationary period. He was further advised that he had been found guilty of falsifying the timeroll on July 9 and 11, 2000 and was therefore dismissed from the Carrier's employment based upon his violation of MWOR Rule 1.6.

The Organization filed claims that were duly handled on property. The parties were unable to resolve these matters, which are now before the Board for determination.

It is undisputed that the Claimant was not at work from July 17 through July 20, 2000. The Organization emphasizes that the Claimant "was forcibly made absent through no responsibility of his making and that the civil authorities held that such detention was of no consequence to the Claimant." The fact that the Claimant was not convicted of wrongdoing by the civil authorities, however, has no bearing on his failure to protect his assignment. Incarceration was not a valid excuse for his absence from work. Apparently, the Claimant had previously been counseled regarding his absenteeism and had been instructed to get permission from Roadmaster Neeser personally in the event he was going to be late or absent from an assignment. In conjunction with this instruction, Neeser had given the Claimant his home phone number and cell phone number in addition to the office number. Thus, the Claimant's story that he was unable to speak personally with his supervisor was not persuasive.

But even assuming arguendo that the Claimant's absence from July 17 through July 20 should have been excused, there is absolutely no basis for exonerating him for his willful falsification of the timeroll on both July 9 and July 11, 2000.

It was clearly established during the Investigation that the Claimant did, in fact, make the illicit entries on the payroll for the dates in question. He claimed that he had worked four and one-half hours of overtime on July 9 and eight hours of overtime on July 11, when he had not worked any overtime on those dates. When the Claimant was asked if he had been honest when he submitted the time for July 9, he admitted, "No, I wasn't." And when he was questioned about his honesty in conjunction with his entry for July 11, he gave an evasive and incomprehensible response.

The Claimant's defense to the falsification charge is that he had trouble entering time for his gang on the Carrier's computer system during the first half of July 2000. Realizing that he had made some errors, he allegedly decided to make the corrections later in the payroll period when he was not feeling frustrated. However, the payroll period for the first period of July ran from July 1 through July 15.

The Claimant worked on July 13 and 14, but did not make any corrections to the payroll. While he testified that he intended to correct the false overtime entries, the fact that the timeroll report was already late when the illicit entries were discovered undermines the Claimant's story that he planned to fix the mistakes prior to submitting the records to Timekeeping. Furthermore, the Claimant had no explanation as to why he made an entry for the date of July 9 when he did not work on that date.

The inescapable conclusion is that the Claimant's real intent was to claim pay for time not worked. If Timekeeping had not contacted Roadmaster Neeser, the Claimant would have benefited from his dishonest payroll entries. The fact that the Claimant was a supervisor and in the position of timeroll preparer made his offense particularly reprehensible.

As to the Organization's contention that there were procedural violations in the processing of this case, suffice it to say that the Claimant's Agreement due process rights were fully protected. He did not have copies of the certified letters of Investigation because he neglected to pick them up at the post office. However, he did pick up the decision of the Investigation, sent to the same mailing address, and he signed and returned the certified mail receipt. Moreover, the Claimant and his Organization representative did attend the Investigation, which was conducted in a fair and impartial manner.

In sum, the Claimant did not offer any believable excuse as to why he submitted false entries for July 9 and 11, 2000. Although he claims there were inadvertent errors that he fully intended to correct, when he was asked whether he had complied with the provisions of Rule 1.6, which require employees to behave honestly, he conceded: "I guess, I have to say no."

The Claimant's intent to defraud the Carrier destroyed the bond of trust that is essential between an employer and an employee, particularly one who works in the field in the position of Section Foreman. The Claimant's dismissal must be upheld.

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 24th day of February 2005.