

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37863
Docket No. SG-37969
06-3-03-3-390

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

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company

STATEMENT OF CLAIM:

- "1. Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe (BNSF).
2. Claim on behalf of S. D. Clapp, for reinstatement to his Signal Foreman's position, with compensation for all lost wages including skill differential, with all rights and benefits unimpaired and any reference to this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it failed to provide a fair and impartial investigation and then issued the harsh and excessive penalty of dismissal against the Claimant as a result of an investigation held on June 4, 2002. Carrier compounded this violation by failing to provide the Claimant with a proper notice of investigation. Carrier's File No. 35 02 0054. General Chairman's File No. 02-053-BNSF-129-S. BRS File Case No. 12586-BNSF."

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 June 5, 2002 the Carrier dismissed the Claimant from its service. As a result of an Investigation held on June 4, 2002 the Carrier found that the Claimant violated MWOR Rules, 1.19, 1.25 and 1.13, Engineering Instructions 15.6 and Signal Instructions 1.1.

"1.19 Care of Property

Employees are responsible for properly using and caring for railroad property. Employees must return the property when the proper authority requests them to do so. Employees must not use railroad property for their personal use.

1.25 Credit or Property

Unless specifically authorized, employees must not use the railroad's credit and must not receive or pay out money on the railroad account. Employees must not sell or in any way get rid of railroad property without proper authority. Employees must care for all articles of value found on railroad property and promptly report the articles to the proper authority.

1.13 Reporting and Complying with Instructions

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

15.6 Vehicle Fuel Credit Cards

Purchase fuel for highway motor vehicles on the authorized Wright Express (WEX) fuel credit card. The credit card is valid for the type and amount of fuel required for the vehicle designated on the credit card.

'To authorize and pay for purchases the employee must use a personal identification number (PIN) and the odometer reading (no tenths) of the vehicle being serviced or fueled. Always enter the accurate mileage to avoid exception report violations.

*** * ***

Only authorized BNSF personnel are permitted to use the BNSF fuel credit card. At no time should unauthorized individuals have access to use the card. Misuse of this credit card may subject an individual to prosecution, dismissal, or both.'

*** * ***

Hours of Service Act, Responsibilities of Employees

*** * ***

Employees are personally responsible under Federal criminal law for the truthfulness of entries on hours of service records the FRA requires railroads to maintain. The railroad must have each employee performing covered service during a duty tour sign the time record. The signature represents an affirmation by the employee that the record is correct, to the best of the employee's knowledge and belief. Participation by an employee in deliberately making a false

entry constitutes a felony punishable by a fine of up to \$5,000, imprisonment for up to two years, or both.”

The Claimant received a fair and impartial Hearing. At the Investigation the Carrier found that the above Rules were violated during the period from November 2001 through May 2002. The record shows that the Claimant drove the Carrier's truck and purchased fuel on days not worked, and that the Claimant used another employee's PIN to purchase fuel, and falsified the Hours of Service Log.

The Claimant's violations of the Carrier's Rules, including theft, were serious in nature. The Carrier met its burden and dismissal is warranted in this case.

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 1st day of August 2006.