

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 39917
Docket No. SG-40323
09-3-NRAB-00003-080119**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Burlington Northern Santa Fe:

Claim on behalf of M. Bee, for reinstatement to his former position with compensation for all lost wages, including skill pay, with all rights and benefits unimpaired and his personal record cleared of any mention to this matter, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it imposed the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on August 15, 2006. Carrier’s File No. 35-06-0041. General Chairman’s File No. 06-039-BNSF-154-TC. BRS File Case No. 13823-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.

The Claimant in this case was assigned to the position of a CTC Signal Maintainer, headquartered at Willmar, Minnesota. On Friday, July 28, 2006, the Claimant took part in the routine start of shift conference call at around 7:15 A.M. and outlined that he would spend the day doing "general maintenance." During the course of the morning, the Claimant's Assistant Supervisor tried to reach him to respond to a call, but was unable to get through. She tried repeatedly until early afternoon, when the Claimant called back. He informed her that he was taking the afternoon off. The Claimant was then told to return to work. Shortly before 3:00 P.M., another call was routed to the Claimant. The Claimant called the signal desk, advised them he was off duty, and changed his status on the IVR system to "off duty." These events led to a separate Investigation in which the Claimant was issued a Level S 30-day suspension for insubordination.

On Monday July 31, 2006, the events were relayed to the Claimant's Supervisor, leading to a review of the time roll system. The Claimant's Supervisor found that the Claimant had paid himself for the entire day on July 28 by inputting into the system that he had worked from 7:00 A.M. to 3:00 P.M. On August 4, 2006, the Claimant was directed to attend a formal Investigation in connection with the charge that he allegedly failed to "submit actual time work[ed] in time roll." The Investigation was held on August 16, 2006. As a result of this Hearing, the Claimant was found to be in violation of Rule 1.6 prohibiting dishonesty and indifference to the performance of duty and was issued the discipline of dismissal.

The Organization acknowledges that the time roll was incorrect, but maintains that the Carrier failed to establish that the Claimant was dishonest. In the Organization's view, the record supports the conclusion that an inadvertent error was made and that the Claimant did not deliberately falsify the time worked on July 28, 2006. The Organization asserts that this was nothing more than an accidental input of incorrect time by the Claimant caused by the stress of an illness

in the family. The Claimant would have changed his hours had the mistake been brought to his attention, the Organization avers.

The Carrier maintains that the Claimant was dishonest when he falsified not only the amount of time worked on July 28, 2006, but the amount of pay he was entitled to as well. By admittedly inputting his time records to show that he worked an entire day, when in fact he left nearly three hours early, the Claimant sought to obtain compensation for time not worked. The Carrier contends that such misconduct is a dismissible offense. The Carrier has the right to expect honest employees, and has no obligation to retain in its service those who, admittedly, are not.

Upon reviewing the record, the Board finds that the Claimant was afforded all due process rights under the Agreement and there are no procedural defects which would serve to vitiate the discipline imposed.

Turning to the merits of the claim, it is clear from both the records of work hours reported and the Claimant's own testimony that the Claimant attempted to obtain compensation for hours that he did not work. The Board is not persuaded that this was unintentional, notwithstanding the Claimant's insistence to the contrary. It is unreasonable to conclude, in light of the notable events of Friday July 28, both at work and in the Claimant's personal life, that the Claimant would have forgotten the hours he worked. Furthermore, a claim of inadvertent error is unlikely in view of the fact that the Claimant had to input his time worked into not just one, but two computer record systems – the PARS System and the Signal Hours of Service Log. While it might be possible to have mistakenly recorded the time in one of the systems, it is doubtful that an unintentional mistake or inadvertence accounted for the fact that both systems were inputted by the Claimant to reflect that he worked the entire day on July 28 when in fact he left early.

Based on the foregoing, the Board finds that the charges against the Claimant are supported by substantial evidence. Once that finding is made, the Carrier's theory of the case becomes persuasive. Dishonesty and fraudulent attempts to obtain pay for time not worked are serious transgressions. The Claimant breached the duty owed to the Carrier to accurately and honestly report the time he worked for compensation actually earned. There are no mitigating circumstances present

Form 1
Page 4

Award No. 39917
Docket No. SG-40323
09-3-NRAB-00003-080119

which would outweigh the seriousness of the proven offense. Therefore, this claim must be denied in its entirety.

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 31st day of August 2009.