

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41008
Docket No. SG-40585
11-3-NRAB-00003-080420**

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: (
(Soo Line Railroad Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian Pacific (formerly Soo Line):

Claim on behalf of L. A. Schreiber, for reinstatement to his former position with all rights and benefits unimpaired and with payment for all time lost with any reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 32, when it issued 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 November 7, 2006. Carrier’s File No. 9-00138. General Chairman’s File No. 01-21-07. BRS File Case No. 14046-SOO.”

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 employed as a Signal Maintainer with assigned headquarters at Sturtevant, Wisconsin. His work hours were from 7:00 A.M. to 4:00 P.M. The Claimant had been issued a white Chevy pick-up truck by the Carrier for travel from home to various work locations.

There is no dispute that the Claimant failed to report for duty on time on October 6, 2006. According to Carrier witnesses, the Claimant was approximately two hours late for work. Foreman Barse testified that he arrived at the Sturtevant location at 6:30 A.M. and left a note for the Signal Maintainers to report for a safety briefing at 7:00 A.M. When the Claimant did not show up for the meeting, Foreman Barse contacted the Communication Control Center (CCC) to inquire about the Claimant's whereabouts. He was informed that the Claimant was rested and expected to be on duty. At approximately 7:40 A.M., Foreman Barse was contacted by Signal Maintainer Serdynski, who regularly drives by the Claimant's house on the way to his assigned territory. Serdynski stated that the white pick-up truck issued by the Carrier was still parked in front of the Claimant's house. Foreman Barse then contacted Supervisor Hansen at 8:45 A.M. to report that he had not seen or heard from the Claimant that morning.

Foreman Barse testified that the Claimant did not arrive until 8:55 A.M. When asked why he was late for work, the Claimant said that he overslept. At no point did the Claimant indicate that he arrived at work at an earlier time.

The Claimant testified that he was late for work on October 6, 2006. He stated that he arrived at approximately 7:38 A.M. Conductor Barbian corroborated the Claimant's testimony, stating that he saw the Claimant when he arrived at about 7:38 A.M. that morning. The Claimant also insisted that the "Orkin man" was present when he reported for work and that work records from the Orkin pest-control company would corroborate his claim.

The Claimant further testified that he stayed until 4:17 P.M. to make up the time he lost due to his late arrival that morning. He offered no evidence to substantiate that assertion. Moreover, the Claimant's supervisor testified that he had counseled the Claimant on several prior occasions that there was no "flex time" and that he was required to report for duty at his headquarters on time. The Claimant was further instructed to notify and obtain permission from a supervisor in order to work outside of his assigned work hours. He did not request or obtain permission to work after his assigned hours on October 6, 2006, according to the supervisor.

The Carrier asserts that there is more than sufficient evidence on this record to show that the Claimant falsely claimed that he worked eight hours on October 6, 2006, when in fact he worked only six hours. Essentially, the Claimant obtained 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 it has no obligation to retain in its service those employees who have demonstrated that they are not trustworthy.

The Organization contends that the Carrier failed to meet its burden of proof. It argues that there is conflicting testimony on the record and that Carrier witnesses cannot be credited because their testimony was unreliable and tainted by motive to distort the truth. While the Claimant was admittedly tardy on October 6, 2006, the claim that he falsified his time record stands unproven, the Organization submits.

Having reviewed the record in its entirety, we find that there is substantial evidence to support the finding that the Claimant falsified his time record for October 6, 2006. The credibility conflicts on this record were resolved by the Hearing Officer. The Board does not make de novo findings of fact, nor do we overturn credibility determinations in the absence of evidence that the Hearing Officer's assessment was arbitrary, capricious or against the manifest weight of the evidence. See Third Division Award 24597, Second Division Award 8130, and Fourth Division Award 4075.

No such finding is warranted here. The Claimant stated that he was late by only 38 minutes and insisted that the "Orkin man" was present at the time he

arrived at work. The Hearing Officer adjourned the Investigation for a short time to obtain the Orkin service record. That record indicated that Orkin serviced the Carrier's Sturtevant location on October 6, 2006, from 8:34 A.M. to 9:08 A.M. It is clear that the record from Orkin does not corroborate the Claimant's version of his time of arrival. On the contrary, the Orkin record provides objective and probative evidence in support of Carrier witnesses who testified that the Claimant was still at home at 7:40 A.M. and did not arrive on duty until 8:55 A.M. The Hearing Officer properly determined that the Claimant's account was not credible. Accordingly, the Board has no basis for interfering with that determination.

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 which would outweigh the seriousness of the proven offense. The Claimant was provided a fair and impartial Investigation and there is no basis to disturb the penalty imposed on Agreement due process grounds. 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 20th day of July 2011.