

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41227
Docket No. SG-41055
12-3-NRAB-00003-090213**

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

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

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of T. S. Humble, for his personal record to be cleared of any mention of this matter, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it imposed the excessive discipline of a 30-day record suspension without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on August 24, 2007. Carrier’s File No. 35-08-0008. General Chairman’s File No. 07-029-BNSF-161-NM. BRS File Case No. 14098-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.

This is a companion case to Third Division Award 41226, in which the Claimant was assessed a 20-day record suspension for violating Rules 1.6, 1.13 and 1.15 of the Maintenance of Way Operating Rules when he used “comp time” to release the members of his Signal Gang before the end of their scheduled workday. The Carrier also charged him separately as an individual with leaving his assignment before his scheduled quitting time and claiming pay for time not worked. For this infraction, the Carrier assessed the Claimant a 30-day record suspension—the next “rung” on the disciplinary ladder.

The facts are exactly the same as set forth by the Board in Award 41226. They are incorporated herein by reference for the sake of brevity.

The Board’s analysis and conclusions are the same as set forth in Award 41226 as well. There is no evidence that the Claimant acted with anything other than a good faith belief that it was appropriate for him to use “comp time” himself to leave work before the end of his scheduled workday. The Carrier failed to establish that the Claimant had the intent to deceive, defraud, or disobey his Supervisor or the Carrier when he left work in accordance with his “comp time” calculations. Moreover, his Supervisor knew that he intended to leave work early and said nothing to prevent it, leaving him with the reasonable conclusion that she had authorized the “comp time.” Accordingly, the instant claim is likewise sustained.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of February 2012.