

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42338  
Docket No. MS-42817  
16-3-NRAB-00003-140399**

**The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.**

**(Dario R. Valdivia  
PARTIES TO DISPUTE: (  
(New Jersey Transit Rail Operations**

**STATEMENT OF CLAIM:**

**“Claim is made for and on behalf of Section Storekeeper, Dario R. Valdivia who was Dismissed from all service on September 10, 2013 after an investigation was held on August 26, 2014. An appeal was scheduled for October 4, 2014 and Denied in writing on October 28, 2013 (See attached). Request is made for Reinstatement along with lost wages in addition to Overtime paid junior employees and other allowances during said time.”**

**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.**

**At all times relevant to this dispute, the Petitioner was regularly employed by the Carrier as a Section Storekeeper at the Meadowlands Maintenance Complex in Kearny, New Jersey. On various dates in May and July 2013, the Petitioner filled a vacation absence at Morrisville, Pennsylvania. For the purpose of traveling daily**

from the facility in Kearny to the Morrisville facility, the Carrier provided him with a company vehicle. It was subsequently learned, as a result of reviewing data generated by the GPS tracking device on the vehicle, that the Petitioner had made unauthorized stops at various locations, including his residence, while driving to or from Morrisville. It was also discovered that he had exceeded the speed limit by as much as 25 miles per hour on various dates.

The Petitioner was consequently withheld from service and directed to attend a Hearing and Investigation at which he was charged with making unauthorized stops causing unnecessary overtime and speeding. Following the Hearing and Investigation, the Petitioner was dismissed from service.

The Petitioner did not deny making the stops while en route, nor did he deny speeding. With respect to the former, he argued that he was told to report to Kearney early so as to ensure the availability of a vehicle and that all of his overtime was paid. Therefore, he maintains that the overtime was authorized. As for the speeding charge, the Petitioner asserts that he drove with the flow of traffic and had not received a citation from the police.

Our review of the record of the Hearing and Investigation shows that the Carrier had substantial evidence to support its charges against the Petitioner. He spent between one hour and 45 minutes and four hours and 40 minutes at locations that were not on his route between Kearny and Morrisville – primarily at his residence. During the nine days of this assignment, the time spent on these diversions totaled in excess of 25 hours. Additionally, it is evident that he drove a vehicle with New Jersey Transit Rail Operations markings as fast as 89 miles per hour on a road with a 55 MPH speed limit.

The fact that the Carrier might have paid the Petitioner for the excessive overtime does not mean that it was authorized. As an employee with more than 30 years of service, it is likely the Carrier had no reason to doubt the Petitioner was performing company business for the hours that he claimed. It was not until the GPS data were analyzed that the Carrier became aware of his unauthorized diversions. It then commenced disciplinary action in a timely fashion.

The Board does not find persuasive the Petitioner's argument that some special arrangement had been made because he would not be driving his own vehicle, and therefore would not be entitled to expense reimbursement. First, the

Board notes that the existence of such an arrangement was never cited by the Petitioner until his Submission before the Board. Instead, his argument had been that all of his diversions were necessary, including time for him to obtain a vegetarian lunch. More importantly, it would not make sense for the Carrier to offer him extra compensation to make up for his not receiving an expense reimbursement when, by driving the company vehicle, he incurred no expenses.

Having found that discipline was warranted, the Board also finds that it was neither arbitrary nor excessive. Notwithstanding the Petitioner's long tenure with the Carrier, it is evident that he breached the bond of trust that is essential to the employment relationship. Although he contends that other employees have engaged in similar misconduct without suffering the same consequences, we find that the Petitioner failed to meet his burden of proving disparate treatment. He failed to provide the names of any other employees who were allegedly similarly situated. Furthermore, his operation of the vehicle bearing the company logo at such an excessive speed is not only bad for the Carrier's image, but it is also dangerous and illegal. His defense that he was keeping up with traffic is simply not acceptable to the Board, just as it would not be acceptable in traffic court.

For these reasons, we must deny the claim.

**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 28th day of July 2016.