

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42377
Docket No. MW-42632
16-3-NRAB-00003-140287**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
(BNSF Railway Company (former Burlington
(Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [standard ten (10) day record suspension and a one (1) year review period commencing on November 5, 2012] imposed upon Mr. J. Lockhart by letter dated November 2, 2012 for alleged violation of MOWOR 1.13 Reporting or Complying with Instruction was without just cause, arbitrary, capricious, and in violation of the Agreement (System S-P-1667-G/11-13-0081 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Lockhart shall now ‘*** be made whole for any and all losses occurred as a result of the Carrier’s violation, and he must have his record expunged of any comment related to this discipline.’.”

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 the time this case arose, Claimant, a traveling mechanic in Vancouver, Washington, was assigned to Seniority District 200. On August 27, 2012, Claimant was assigned to work 7:30 pm to 5:00 am. He entered eight hours straight time plus 12 hours overtime into the payroll records. He had travelled from his home to the gang during the day, but in the Carrier's judgment was not entitled to 12 hours overtime. Instead, he was entitled to travel time at the straight time rate of pay.

Rule 35 of the collective bargaining agreement states as follows in pertinent part:

"A. Employees not in camp cars and other than those covered by Section G hereof will be allowed straight time for actual time waiting or traveling as passengers by passenger train or other public conveyance by the direction of the Company, during or outside of regular work period including travel on rest days or holidays, either on or off an assigned territory.

If, during the time on the road, an employee is relieved from duty and is permitted to go to bed for five (5) or more hours, such relief time will not be paid for, provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day for service and travel when such irregular service prevents the employee from making his regular daily hours at home station. * * *

E. Each employee furnished means of transportation by the Company will be paid the amount of travel time computed at straight time rate from one work point to another which the conveyance on which transportation made available by the Company would take regardless of how any employee actually travels from one work point to another."

The Claimant was found to have violated MOWOR 1.16 Conduct and 1.13 Reporting and Complying with Instructions.

It is the Carrier's position that the Organization is asking for leniency, which is not the province of the Board. During the investigation, Claimant admitted he intentionally instructed timekeeping to enter the overtime. He should have known his submitted time was completely erroneous.

The Organization avers Claimant testified to his understanding that he was entitled to the overtime, and recalled that his Union representative agreed. He explained his understanding was that travel mechanics were to be compensated for all travel time outside normal hours of service. He interpreted this to add travel time to his regular work schedule, resulting in overtime. His supervisor told him he would make calls to see whether he indeed qualified for the overtime, however, the supervisor never got back to him. Instead of providing Claimant with an answer to his question, the Carrier issued discipline a day or two later. The Carrier should have just corrected his pay or given him a chance to do it.

The Board finds the Carrier pointed to no evidence in the record that would rebut Claimant's assertion that his supervisor was looking into whether he qualified for overtime. This testimony therefore is taken as true. The open inquiry into whether the overtime was legitimate undermines any assertion that Claimant was guilty of ignoring instructions and rules. He sought clarification from supervision and it was unfair to penalize him without first affording him an answer to his question.

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for any time lost as a result of this incident.

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 30th day of August 2016.