

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42381  
Docket No. MW-42776  
16-3-NRAB-00003-140505**

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

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

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Foreman J. Mucha by letter dated May 31, 2013 for his alleged violation of MOWOR 1.6 Conduct in connection with his alleged falsification of payroll while working as a surfacing gang foreman on TSCX0057 on April 12, 2013 was on the basis of unproven charges, without merit, excessive and in violation of the Agreement (System File B-M-2681-E/11/13/0259 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Mucha’s record shall ‘\*\*\* be cleared of the charges and proceedings of this investigation (File Number MON-MOW-2013-00212). We also request that Mr. Mucha be made whole for any loss of earnings from the time withheld from service on June 1, 2013, until he is returned to service and he be reimbursed for personal mileage on a round trip basis, from his home in Puyallup, WA to Billings, Montana, where the investigation was held. We further request Mr. Mucha be made whole for any loss of fringe benefits, including but not limited to, insurance, railroad retirement credit, vacation credit, etc.”**

**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 worked as a foreman on the TSCX0057 super surfacing gang and was responsible for overseeing gang timekeeping. The division Roadmaster reviewed payroll and noticed the Claimant had put in for eight hours straight time plus 1.5 hours overtime for April 12, even though he arrived at 09:00 and left at 11:30 to fly to Las Vegas. On April 15 he did not show up due to a flight delay, but paid himself three hours that day. On April 22 the entire gang was shut down due to weather. Gang members were instructed to pay themselves three hours for show up time and list the rest of the day as weather. The Claimant paid himself five hours for this day.

The Carrier avers the Claimant was a foreman who was trusted to enter time for himself and his gang. His argument that he actually worked the time in question by taking phone calls cannot be credited. He violated MOWOR 1.6 on dishonesty.

The Carrier also notes the Organization failed to raise any claim of a time limit violation at the time of investigation and precedent is clear that it must therefore be deemed waived.

The Organization argues there was a time limit violation in this case, requiring summary grant of the claim. The investigation occurred on May 1, 2013. Rule 40D requires that the Carrier provide written notice of its decision within 30 days. The letter of termination was post dated June 1, 2013 and was received on June 3, 2012. As a result, the discipline is void. It was also a violation of Rule 40 for the discipline to be issued by someone other than the Conducting Officer.

The Organization also asserts the Claimant was not trained properly on how to put time in when making work-related telephone calls. Further, the Organization seeks reimbursement for the Claimant's round trip from home in Washington to Montana.

**DECISION: Rule 40 states as follows in pertinent part:**

- “A. An employee in service sixty (60) days or more will not be disciplined or dismissed until after a fair and impartial investigation has been held. Such investigation shall be set promptly to be held not later than fifteen (15) days from the date of the occurrence, except that personal conduct cases will be subject to the fifteen (15) day limit from the date information is obtained by an officer of the company (excluding employees of the Security Department) and except as provided in Section B of this rule. \* \* \***
- J. If an investigation is not held or a decision rendered within the time limits herein specified, or as extended by agreed-to postponement, the charges against the employee shall be considered as having been dismissed.”**

The Board has carefully reviewed the record. On April 15 the Roadmaster confronted the Claimant about his payroll. Fifteen days from first knowledge would be April 30, yet the investigation was not until May 1. The Carrier violated Rule 40A by failing to hold the initial hearing within 15 days from learning of the possible offense. Under the clear language of Rule 40J, the charges against the employee must be deemed dismissed.

The claim is sustained in full. The Carrier shall immediately remove the discipline from the Claimant's record and reinstate the Claimant, subject to its policies on return to work, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident. Lost overtime shall be compensated at the overtime rate. His compensation shall be reduced by any interim earnings he may have had from outside employment. The Claimant shall be reimbursed for medical benefits to the extent that he provides the Carrier and the Organization with receipts of medical expenditures that would have been covered but for the lapse in his Health and Welfare Benefits. The Parties shall then jointly determine what co-pays, premiums and other medical costs would otherwise have

been covered by his insurance had he continued in the Carrier's employ uninterrupted by dismissal. Any other claims to compensation not specifically granted in this award are hereby denied.

**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.