

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42812
Docket No. MW-42920
17-3-NRAB-00003-140435**

The Third Division consisted of the regular members and in addition Referee Erica Tener when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Soo Line Railroad Company (former Chicago,
(Milwaukee, St. Paul and Pacific Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. N. Demonte by letter dated August 13, 2013 for alleged violation of General Code of Operating Rules 1.1.3- Accidents, Injuries, and Defects; 1.2.7- Furnishing Information; 1.4- Carrying out Rules and reporting Violations; 1.6- Conduct: Negligent; Engineering Safety Rules Rights and Responsibilities; CP Engineering Red Book Section 1 Requirements- Track Protection; and CP Corporate Policy- Code of Business Ethics- Prohibition against Fraud in connection with charges on Notice of Investigation dated July 12, 2013 was on the basis of unproven charges, arbitrary, capricious, excessive and in violation of the Agreement (System File D-49-13-450-02/8-00546 CMP).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant N. Demonte shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall receive all lost wages, straight time, overtime, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare insurance, dental insurance, supplemental insurance, and any and all other benefits to which entitled.”**

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.

By letter dated July 12, 2013 Claimant was instructed to attend an investigation hearing on July 29, 2013 for the purpose of developing all pertinent facts in connection with events on June 26, 2013 of alleged falsification by signing off on a track defect in the DTN system without verifying the location or correcting the defect and forging another employee's signature on a federally regulated document. In a letter dated August 13, 2013 Claimant was notified that he had been found guilty of violating the rules listed below and was to be dismissed.

- GCOR 1.1.3 – Accidents, Injuries and Defects
- GCOR 1.2.7 – Furnishing Information
- GCOR 1.4 – Carrying out Rules and reporting Violations
- GCOR 1.6 – Conduct: Negligent
- Engineering Safety Rules Rights and Responsibilities
- CP Engineering Red Book Section 1 Requirements – Track Protection
- CP Corporate Policy – Code of Business Ethics – Prohibition of Fraud

The facts of the incident leading are largely undisputed. Claimant was assigned to locate a track defect first detected on June 25, 2013 and to ensure it was repaired prior to July 25, 2013. On June 26, 2013, Claimant falsely reported that the defect was located and repaired and signed another employee's name to the official report. During the investigation hearing, Claimant admits "after inspecting 53 switch, I did not see or find yellow ribbon or touch cut rail defect on 53 switch. I was thinking that Jose Morales did the repairs." Claimant made several excuses for his failure to repair

the defect and for forging a coworker's name including an inability to find the defect and being confused because he had a lot on his mind.

The Carrier argues the claim should be denied in its entirety because there is (1) substantial evidence of the Claimants' culpability, (2) the discipline assessed was reasonable, warranted, and commensurate with the seriousness of the offense, and (3) there were no procedural violations in the Carrier's handling of this case that would warrant voiding the discipline assessed. The Organization contends the claim should be sustained because (1) there are multiple procedural errors and (2) the Claimant, a 33 year employee, made an honest mistake.

The Board reviewed the evidence and testimony and concludes a fair and impartial hearing was conducted and that there is substantial evidence that the Claimant violated the Carrier's rules cited as listed above. The Claimant asserts that he was confused and made a mistake. The Board finds that the weight of the record does not favor the Claimant in this regard. The Claimant has worked for the carrier for 33 years and should know better than to make such an egregious mistake. Deliberate falsification of the Carrier's reports is a fundamental responsibility that cannot be tolerated. Signing another employee's name on a federal document has far reaching implications. If a train were to derail as a result of the failure to repair the defect, blame would be put on the employee whose name was listed in the Carrier's repair log. The Carrier should not be required to continue the employment of an employee who falsifies documents.

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 November 2017.