

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42867
Docket No. SG-43471
18-3-NRAB-00003-160100**

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(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 E. F. Wassam, for reinstatement to service with compensation for all time lost, including skill pay, with all rights and benefits unimpaired and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 13, 2014. Carrier’s File No. 35-15-0004. General Chairman’s File No. 14-034-BNSF-172-A. BRS File Case No. 15257-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.

The Claimant was observed absent from work on June 2 and 3, 2014. Because he submitted eight hours straight time for each day, he was found to have falsified payroll and to have been dishonest. As a result, he was dismissed.

His dismissal was grieved by the Organization as unjust. The parties to said dispute were given due notice of hearing thereon. Failing to resolve the matter, the Organization referred this dispute to the National Railroad Adjustment Board ("NRAB") for arbitration. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

BNSF determined in early 2014 that the overtime payments in the Claimant's work area were excessive when compared to similar locations on the Southwest Division. Starting in February 2014, discussions were held with employees on the Phoenix Subdivision, including the Claimant, informing these employees of BNSF's expectations. These expectations included instructions to contact a Supervisor before absenting themselves from assignment during regular hours. In June 2014, overtime was still excessive, so a "stealth audit" was performed from June 2 through 4, 2014.

The Claimant was observed absent from work for several hours during his shift on June 2 and 3, though he entered eight hours for each day. Company Officers observed the following activities by Claimant on the days in question:

"June 2, 2014

0700 – 1100 – working

1100 – 1130 – lunch

1130 – 1200 – working

1200 – 1320 – at Walmart

1320 – 1458 – working

1458 – 1530 – his residence

Working hours: 6 hours 8 minutes

Non-working hours: 1 hour 52 minutes

June 3, 2014

0700 – 0716 – late to work

0716 – 0859 – working

0859 – 1100 – his residence

1100 – 1130 – lunch at his residence

1130 – 1530 – plumbing store and his residence

Working hours: 1 hour 43 minutes

Non-working hours: 6 hours 17 minutes”

The Carrier flatly denies the Organization’s contention that the entire Signal Department in the Phoenix area operated under an unofficial “give and take” practice that allowed them to take time off as long as they worked the time off later. It notes there is no evidence on record to corroborate this assertion. Supervisor Sheets denied that there was any policy that allowed employees to charge time, then work without pay later. He explained the only empowerment they have is to relocate if needed, in which case they are to advise him accordingly. The Carrier concludes the evidence plainly shows the Claimant charging the Carrier for hours spent at home or shopping, and maintains this constitutes blatant dishonesty.

The Organization protests that the hearing officer and the writer of the letter of dismissal are the same person. In its view, this constitutes fatal procedural error. The Organization notes that the Carrier has dismissed a 35-year employee and considers this a powerful mitigating circumstance. It then makes two points: Give/Take and Empowerment. It describes Give/Take as a policy of allowing employees to add and subtract hours to payroll so long as they made up for it later. Empowerment refers to the Carrier’s delegation of authority to the employee to make decisions without supervisory permission when necessary to preserve health and safety of employees and equipment. The Organization stresses that these policies were the reason why the accused made the decisions he did on the days in question.

According to the Organization, the empowerment procedure was used as needed when an employee felt the need to utilize time away from the extreme hazards of the job. It alleges each employee and his/her supervisor knew empowerment existed to avoid injury or damage to employees. It maintains the hazards of concern included the extreme heat of Phoenix and the fatigue of working excessive odd hours. The Claimant asserts he enjoyed this arrangement with his previous signal supervisors,

but until the investigation, he had not had an opportunity to discuss it with his signal supervisor, D.B. Sheets.

The Claimant contends that on June 3, 2014 he received a call from home that he was needed for an emergency. He immediately responded, not knowing how long it would take, but believing that once he had a chance, he would talk to Supervisor Sheets. He denied having any opportunity to do so before his removal from service.

The Board finds no procedural error in this case. The Hearing Officer is the appropriate person to evaluate credibility and render a decision accordingly.

The Board is not at all persuaded by the Organization's contentions regarding practices for keeping payroll hours. Allowing employees to falsely record time worked would fly in the face of legal and contractual requirements regarding employee pay, and for that reason alone, would require strong and convincing proof. Further, an employer cannot function without knowing what human resources are available to perform needed work. To have employees depart without a peep would leave supervision clueless as to who was at work and who was not. Even if such practice could be deemed to exist, it would have to be tightly tied to a requirement to advise supervision of the need to depart. Yet there is no evidence whatsoever that the Claimant let any member of supervision know he was leaving work.

Not surprisingly, there is no substantiation for this alleged practice. There is not a scintilla of evidence that employees were allowed to play with their hours in this fashion. Clearly, when the Claimant wrote down that he had worked eight hours, this became the payroll record, an official employer document relied upon for everything from meeting legal requirements to assessing fiscal liability. Under the proposed "empowerment" practice, a second falsification would be required when the Claimant theoretically worked make-up hours without recording them as hours worked. Supervision simply cannot countenance inaccurate or falsified record keeping, particularly when it comes to payroll, and this Board is not persuaded than any manager or supervisor did.

We are left with the mitigating circumstance of long and faithful service. Unfortunately, there are situations where the employer-employee relationship has become so damaged that no mitigating circumstance can glue it back together. Where

the employer's trust in an employee has been lost, such a situation arises. The Claimant worked within a system that allowed him to record his own hours, and as such, he was trusted to be honest and straightforward fulfilling this task. Instead, the record shows the Claimant took off work for long periods of time and neglected to even mention to his supervisor that he was gone. At the same time he recorded in official records that he had indeed been at work. The Carrier has met its burden of proof in this case.

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 10th day of January 2018.