

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42868
Docket No. SG-43472
18-3-NRAB-00003-160101**

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 Terry A. Buckley, 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. 35-15-0011. General Chairman’s File No. 14-033-BNSF-172-A. BRS File Case No. 15256-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.

Believing overtime in the Phoenix area to be excessive, the Carrier performed a “stealth audit from June 2 through 4, 2014. The Claimant was allegedly observed reporting late to work on June 3 and 4. He was also deemed to have been absent from work for several hours on June 2 and 3. A time review revealed that the Claimant entered eight hours straight time on June 2, 3 and 4. Also on June 3, the Claimant entered overtime when he had not worked an eight-hour shift.

The Claimant was found to have falsified payroll records. The Carrier considered this theft and dismissed him. The Organization protested the dismissal as unfair and unjustified. The parties to this dispute were given due notice of hearing and the matter has been properly processed to arbitration. This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The Carrier notes that at no time on the days in question did the Claimant call his supervisor to advise that he would not be at work. The HCLS installed in the Claimant’s vehicle revealed the following regarding Claimant’s whereabouts on those days:

“June 2, 2014

0600 – 1000 – working

1000 – 1030 – lunch

1030 – 1200 – working

1200 – 1430 – at Walmart and his residence

Working hours: 5 hours 30 minutes

Non-working hours: 2 hours 30 minutes

June 3, 2014

0600 – 0711 – home

0711 – 0739 – commute residence to headquarter location11

0739 – 0950 – working

0950 – 1000 – co-worker’s residence

1000 – 1030 – lunch at co-worker’s residence

1030 – 1205 – co-worker’s residence

1205 – 1430 - working

Working hours: 4 hours 36 minutes

Non-working hours: 3 hours 24 minutes

Overtime: 15 minutes

June 4, 2014

0600 – 0658 – home

0658 – 0726 – commute residence to headquarter location12

Non-working: 1 hour 26 minutes1”

The Organization’s defense -- that the entire Signal Department in the area had an unofficial “give and take” practice—cannot be credited. The Carrier notes a complete absence of evidence to corroborate this assertion. Supervisor Brooks’ superior, Manager Lovato, as well as Signal Supervisor Sheets, who covered for Brooks when he was away, both explicitly testified there was no such practice. The Carrier argues that the only reasonable conclusion is that the Claimant engaged in payroll fraud.

The Organization emphasizes that this is a 35-year employee with no formal discipline on his record. It makes two points: Give/Take and Empowerment. It described Give/Take as a policy of allowing employees to add and subtract hours to payroll so long as they made up for it later. It states 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 stressed that these policies were the reason why the accused made the decisions he did on the days in question.

In the eyes of the Organization, the Claimant never willfully attempted to deceive the Carrier. Instead, as his testimony verified, his intent was to make up for these days with additional work as he had done many times before. Nevertheless, the Organization points out that the Claimant was remorseful about the incident. The Organization further protests the conduct of the Hearing Officer, including leading witnesses and challenging them.

There was no prejudicial procedural error in the conduct of the hearing in this case. Though the conduct of the Hearing Officer can be faulted, it did not distort the evidence adduced or result in any other improper impact.

The Board does not find the Organization's proposed Give/Take or Empowerment explanations persuasive. No supervisor verified that such practices were accepted. The Board does not find it likely that such practices would be prevalent, for to do so would leave supervision without any idea of who was at work available to perform needed tasks and who had decided they would work later. No operation can function at all, much less effectively, if it cannot predict available human resources. In addition, supervision is responsible for insuring employee pay satisfies the requisites of both contract and law. It cannot fulfil these obligations if it has no record of who was actually working at any given time. The Organization's alleged practices defy logic and would require strong probative evidence. In this case, there is no such evidence.

The Claimant's departure from work while staying on the clock and collecting wages was repeated and was for substantial periods of time. There is no indication that he advised his supervisor of his intent to leave work, nor was there any corroborating evidence that his conduct was accepted by supervision. In the Board's assessment, the Carrier has offered substantial evidence of dishonesty. Though the Board recognizes Claimant's long and valued service, a breach of trust in the employment relationship is extremely serious, particularly where, as here, employees are left in a position of relative trust. The Carrier has met its burden of proof.

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.