

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 43839
Docket No. MW-44999
19-3-NRAB-00003-180495

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

(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) of Mr. M. LaClaire by letter dated August 16, 2017 for alleged violation of Safety Rule PGR-N in connection with his alleged conduct of entering time in excess of actual hours worked was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier File MW-17-10 STR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. LaClaire shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be made whole for all wage loss suffered including lost overtime and benefits.”

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.

On July 24, 2017, the Carrier issued a notice of hearing to Mitchell LaClaire (Claimant):

“This Notice of hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident(s) outline below:

ALLEGED VIOLATION OF SAFETY RULE(S) PRG-N

On Monday, July 24, 2017, while you were working as Foreman on the Maintenance Crew #5245, you were taken out of service pending a hearing when it was discovered that time entered by you on your time sheet for the week ending July 15th, allegedly reflects in excess of your actual hours worked.”

An Investigation was held on August 3, 2017. The Claimant was found responsible for the rule violation as charged and dismissed from service. The Organization filed an appeal on the Claimant’s behalf and the matter was handled in accordance with the Parties’ Agreement on property. This matter is now properly before this Board for final adjudication.

Bill Roussel, East Deerfield Track Supervisor and Todd Chessie, Superintendent (and charging officer) served as Carrier witnesses in this case. Chessie testified Roussel contacted him on July 17, 2017 to ask how to handle a payroll situation. Roussel told Chessie the Claimant left two hours early on July 11, 2017 but submitted payroll records indicating he worked a full eight-hour shift. Chessie informed Roussel that he would handle the matter. According to Chessie, the Claimant’s actions violated Carrier’s Rule PRG-N (4th paragraph):

“No time or wages are to be entered on time slips or payroll forms except for work actually performed by the person whose name appears thereon. Time slips or payroll forms must be filled out completely and accurately. Any time slips or payroll forms improperly entered is sufficient cause for dismissal.”

Chessie explained this rule is contained in the employee rulebook. Timesheets are completed by the employee and that Foremen, such as the Claimant are not required to get an authorizing signature. Employees are required to sign the timesheet to “certify that this timesheet is correct.” On Monday, July 24th, Chessie testified that he called payroll to inquire as to whether the Claimant called to say he’d made a mistake. The Claimant had not.

Roussel testified the Claimant spoke with him on July 11, 2017 because he needed to leave two hours early to attend to a family emergency, his father was admitted to the hospital. The Claimant asked Roussel how to enter the early departure on his timesheet and was told to put in for six hours since he was leaving two hours early. Roussel faxed all timesheets to payroll on July 17th. After submitting the sheets, Roussel noticed the Claimant entered eight hours for July 11th. Roussel testified he was relatively new to the supervisory role and contacted Chessie to find out what to do about the Claimant’s incorrect timesheet. Chessie told Roussel that he would look into the matter and handle it. On Monday, July 24, 2017 Roussel and Chessie met with the Claimant who admitted having made a mistake on the timesheet.

The Claimant acknowledged having received a copy of the rulebook which contains Rule PRG-N. He also corroborated the conversations as testified to by Roussel (July 11 and July 24). The Claimant testified he made a mistake on his timesheet, “I’d ended up forgetting that I went home early.” That week had been especially difficult for him. His father was admitted to the hospital on July 11th and he attended a funeral on July 14th (for which he took a personal day). The Claimant admits he “absolutely made that mistake and it wasn’t anything malicious or trying to pad the payroll... an honest mistake and obviously now I regret doing it.”

The Carrier argues it presented sufficient to meet its burden to prove the Claimant violated Rule PGR-N. Stealing time, the Carrier argues is a serious offense and one for which it has consistently terminated employees (labor and management) regardless of the amount of time involved, the length of time the person has been employed or their prior employment record. The Carrier submits numerous awards in support of its position.

The Organization acknowledges the Claimant put in for two hours of time he did not work but argues it was an honest mistake. The Claimant had had a tumultuous week and forgot he’d left work two hours early on July 11th. The Organization cites awards in which Boards have sustained claims when the Carrier fails to prove intent to deceive on the part of the claimant. The Organization also argues the Carrier, in this case,

makes an assumption the Claimant maliciously attempted to deceive the Carrier by claiming an extra two hours. It further contends management should have approached the Claimant and asked about the error as soon as it was discovered rather than wait until after he had already received his paycheck. In conclusion, the Organization argues dismissal of this Claimant is excessive and the Carrier failed to take mitigating factors into account.

The Board has carefully reviewed the record and finding no procedural objections will discuss the merits of the case.

The evidence of record establishes the Carrier presented sufficient evidence to prove the Claimant falsified his timesheet. The Claimant admitted as much. Employees are responsible for accurately reporting hours worked. They sign their timesheets attesting to the fact that they are correct. Falsifying timesheets results in theft of time regardless of an employee's intent. This Carrier has a long history of dismissing employees who falsify timesheets regardless of title, length of service and employment history. The awards submitted by the Organization are distinguishable in that they primarily address Claimant's charged specifically with intent to defraud the Carrier. That is not the case here. This Claimant was charged with completing a timesheet on which he claims hours not worked. There is no allegation of intentionally or knowingly falsifying the timesheet. While the Board recognizes mitigating circumstances may have led to the error, it will not disturb a long standing past practice.

For these reasons the Board must deny the claim.

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 4th day of September 2019.