

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43898  
Docket No. SG-45208  
20-3-NRAB-00003-180645**

**The Third Division consisted of the regular members and in addition Referee Dennis J. Campagna when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp. (Amtrak):**

**Claim on behalf of E. Antico, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 57, when it issued the harsh and excessive discipline of dismissal to 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 May 11, 2017. Carrier's File No. BRS-SD-1213D. General Chairman's File No. AEGC #2017-102-1. BRS File Case No. 15858-NRPC(S). NMB Code No. 173.”**

**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 relevant facts giving rise to this dispute are as follows:

By letter dated March 28, 2017, the Carrier issued a Notice of Investigation for April 6, 2017 to review the following Charge and Specification:

**Charges:**

1. Violation of Amtrak's "Standards of Excellence" pertaining to the sections entitled Trust and Honesty, Professional and Personal Conduct and Attending to Duties, which read in pertinent parts:

**“Trust and Honesty:** *“Because honesty is so important to trust and our ability to work together as a team, Amtrak has no tolerance for employees who are dishonest.”*

**Professional and Personal Conduct: Teamwork-** . . .Part of teamwork is properly performing your duties. Another part is following instructions. Therefore, you must comply with all company and departmental policies, procedures and rules as well as all instructions, directions, and orders from supervisors and managers.”

**Amtrak Value:** “Integrity .. We will always tell the truth. We will practice . . .high ethical standards of conduct .. and strive to earn and maintain the trust and respect of our employees and the public.”

**Attending to Duties:** “. . .As an Amtrak employee and, therefore, the company's most important resource, you have an obligation to perform your duties properly and in accordance with the standards set for your particular job. That requires that you remain alert to your duties at all times. Any activity or behavior that distracts or prevents you or others from attending to duties is unacceptable.” ”

2. Violation (TED) Time Entrance Reporting Policy.

**Specification(s):**

After concluding its investigation, the Amtrak Engineering Department was advised on March 9, 2017 by Amtrak's Office of Inspector General that Amtrak Signal Maintainer Eric Antico, had engaged in the following:

1. On July 19, 2016 while being interviewed by Special Agent(s), conducted himself dishonestly when he provided false, incomplete and or misleading information to a Federal Agent during the course of the investigation regarding his leaving of work early before the end of his shift.
2. From August 25, 2013 to September 28, 2013 Mr. Antico was observed on Video Surveillance arriving late and or departing his work shift early on 5 occasions. Mr. Antico was paid 15.75 hours overtime for a total of \$520 for time he did not work during this time.
3. Between August 2014 and June, 2016, Mr. Antico failed to utilize the Time Entry Device System (TED) for weekend overtime shifts on 39 occasions as required by Amtrak's Engineering Department.

The formal investigation took place on May 1, 2017 at which time the Claimant attended with his BRS representative. The Claimant was offered full and fair the opportunity to question witnesses, examine evidence, and submit evidence on their own behalf.

By Decision dated May 23, 2017, Hearing Officer Francis Krische found the Claimant partially guilty, concluding there was substantial evidence presented at trial that he was dishonest and was paid for time that he did not work. The Claimant's employment was terminated on May 24, 2017. A timely appeal by the Organization followed. Unresolved, the Organization filed a notice of intent to file a submission with the NRAB Third Division dated July 2, 2018.

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on November 19, 2019.

The Carrier and Organization are parties to a Collective Bargaining Agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Claimant's craft. The instant appeal has been handled in the usual manner up to and including the highest officer designated by the Carrier to handle such disputes, and has been discussed with and denied by that officer. Therefore, the dispute is properly referable to this Board in accordance with Section 3, First (i) and (h) of the Railway Labor Act.

This is a claim for rescinding E. Antico's (Claimant's) termination together with a make-whole remedy. The circumstances giving rise to the Claimant's termination and the resulting claim are detailed below.

As a result of an anonymous tip received by the OIG's office, an investigation was conducted which focused on C&S Gang Q062 headquartered near Newark, NJ and supervised by Donald Harper and Richard Vogel, both of whom pled guilty to criminal charges of payroll fraud. The OIG investigation regarding the allegations in this case was conducted by OIG Investigator Wendi Grant who issued her report on March 9, 2017 which detailed its findings that several members of Gang Q062, including the Claimant, had violated Amtrak policy and committed payroll fraud by claiming and receiving pay for unworked regular and overtime hours and failing to follow the Carrier's TED policy. In addition, video surveillance documented the Claimant's late arrivals and early departures for overtime work shifts at Lincoln. Surveillance documentation was compared with hours for which the Claimant was paid to determine that the Claimant was paid for 15.75 overtime hours he did not work, totaling \$520. The Claimant was employed as a Helper during the relevant time period and during this time the Claimant did not utilize a Company truck.

Surveillance records viewed on a DVD at the hearing showed the Claimant leaving Lincoln at 12:42 PM on August 25, 2013, when he was paid for a 12-hour shift which would have ended at 6 p.m. The Claimant was seen arriving at Lincoln at 6 AM and leaving at 3:51 PM on August 31, 2013, where he was also paid for working until 6

PM. The Claimant was also paid for 12 hours on September 21, 2013, when he arrived at 6:24 AM and left at 2:23 PM. The Claimant's work hours for September 28, 2013 were 6:21 AM and 12:51 PM and the Claimant was also paid for the full shift.

While admitting that he was late at times, the Claimant testified that while he was stationed at Lincoln, he could have been doing other tasks before arriving at Lincoln on the dates when surveillance showed him arriving late. The Hearing Officer did not find the Claimant credible with regards to why surveillance showed the Claimant arriving late on several occasions. In this regard, the Hearing Officer concluded that:

**"I find there was substantial evidence that you arrived late for work but entered your time as having arrived on time and you received payment for this time which I find is dishonest and shows a failure to attend to duties and teamwork."**

In the end, the Hearing Officer carefully weighed and reviewed the evidence and concluded that the Claimant was guilty of putting in for and receiving pay for time not worked as alleged in the Charge. While the Organization has taken issue with the Hearing Officer's decision and conclusion, it is clear to this Board that the Hearing Officer observed the testimony and received the evidence first hand. Finding no basis upon which to discount the Hearing Officer's weighing of the conflicting evidence and inferences, this Board is bound to accept her conclusions, particularly as to the determinations made regarding witness credibility. In this regard, the Hearing Officer determined that the Claimant's testimony was not convincing or credible. Given the record as a whole, this Board finds and concludes that the Hearing Officer's credibility determinations were sound and should not be disturbed.

Having concluded that there is substantial evidence in the record to support the allegations, there remains a question as to the appropriate discipline. In assessing the appropriate discipline, note is taken of the Claimant's clean record where, prior to the instant infraction, the Claimant had a clean record with no previous misconduct. It should also be noted that the Claimant admitted to being late to work on several occasions, the only charge for which the Hearing Officer found substantial evidence. In this regard, the Claimant readily admits that he made a mistake for which he will always be sorry. With this as a backdrop, the Board will direct that the Claimant be returned to work, but without back pay. The time period between the Claimant's termination and his reinstatement shall be considered as a long term unpaid disciplinary suspension.

Finally, given the uniqueness of this case, this decision shall not be cited in any future occasion as a precedent for like cases which must rise or fall based on their own set of facts.

**AWARD**

Claim sustained in accordance with the Findings.

**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 28th day of January 2020.**