

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44550  
Docket No. SG-45734  
22-3-NRAB-00003-200073**

**The Third Division consisted of the regular members and in addition Referee Keith D. Greenberg when award was rendered.**

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

**STATEMENT OF CLAIM:**

**“Claim on behalf of B.W. Oxner, 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 December 21, 2016. Carrier's File No. BRS-SD-1210D. General Chairman's File No. 2017-11201. BRS File Case No. 16190-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.**

During the time period giving rise to this claim, the Claimant, Bruce Oxner, was employed as a Signal Foreman in the Carrier's Signal Department.

The record reflects that, on June 4, 2016; June 11, 2016; and June 18, 2016, the Claimant performed work at the home of his supervisor, Rick Vogel, on behalf of Vogel, while remaining clocked in as if working on behalf of the Carrier. Specifically, the Claimant assisted Mr. Vogel in the installation of solar panels and supporting hardware at Mr. Vogel's home, including using materials belonging to the Carrier, and traveled to and from Mr. Vogel's home in a Carrier vehicle. It was undisputed that the Claimant performed this work while on the clock; that this work was for Mr. Vogel's benefit, and that this work was not on behalf of the Carrier.

In addition, the record reflects that, on June 18, 2016, the Claimant, despite having left work early, did not clock out until 6:00 p.m., resulting in his receipt of approximately eight hours of pay, at his overtime rate, for time not actually worked.

Furthermore, the record reflects that the Claimant, prior to July 20, 2016, had not regularly used the Carrier's TED ("Time Entry Device") time and attendance tracking system to record his time at work.

These facts were not disputed by the Claimant, and reflect an account provided by the Claimant to James Harper, a Senior Criminal Investigator in the Carrier's Office of Inspector General, on July 20, 2016. The record reflects that, after the conclusion of his interview with Mr. Harper, the Claimant contacted the Carrier's payroll staff to recover what he characterized as an overpayment of eight hours of overtime that he had failed to previously recognize.

The Claimant was withheld from service effective November 17, 2016.

This matter arises from the following Charges and Specifications against the Claimant:

**Charge(s):**

- 1) Violation of the Amtrak Standards of Excellence sections entitled Amtrak Values: Integrity, Trust and Honesty, Attending to Duties, and Professional And Personal Conduct which read in pertinent parts:

**Amtrak Values: Integrity:** “We will always tell the truth. We will comply with the spirit and letter of laws, practice high ethical standards of conduct, be socially and environmentally responsible and strive to earn and maintain the trust and respect of our employees and the public.”

**Trust and Honesty** “Every productive employment relationship requires that the employee and his/her employer trust one another. So it is at Amtrak. When you become part of our company, we place our trust in you. In turn, you must conduct yourself honestly and in a way that reflects credit upon Amtrak.

*“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.”*

Specifically, none of us has the right to use or take for our personal gain any funds, property or services belonging to the company, our coworkers or our customers. Remember that taking anything that is not yours, no matter how small in value, is stealing and, therefore, dishonest.

All of us have a stake in keeping our company viable. Our jobs depend on it! Therefore, we have a responsibility to use and account for Amtrak funds, property and services...with care and economy and protect them from abuse. Damaging or wasting company property...harms us all and will not be tolerated.”

**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. This 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.”

**Professional and Personal Conduct:** “Conduct...On the Amtrak team, there is no place for activities or behaviors that compromise the

safety, satisfaction and well-being of our customers, the public or our fellow employees...”

- 2) Violation Highway Vehicle Utilization and Control 11.54.0; (Personal Use of Highway Vehicles) 3.3; 4.1.1; 4.2.1; 4.2.1.2
- 3) Violation of Instruction No. 2: TED Time Entrance Reporting Policy dated 8/31/2010

**Specification:**

After concluding its investigation, the Amtrak Engineering Department was advised on November 15, 2016 by Amtrak’s Office of Inspector General that C&S Maintainer Bruce Oxner had engaged in the following activities:

- “1. On Saturday, June 18, 2016, and 2 additional dates, as admitted to Inspector General Investigators, Mr. Oxner improperly used a company issued vehicle when he drove it to his supervisor’s residence on three different occasions to perform non-business related tasks during or after normal business hours.
2. Mr. Oxner dishonestly paid himself when he did not perform work for Amtrak on June 4, 2016 and June 18, 2016, and on 2 additional dates as admitted to Inspector General Investigators.
3. Mr. Oxner routinely failed to utilize the Time Entry Device System (TED) prior to July 20, 2016, as required by Amtrak’s Engineering Department.”

An investigation was conducted in this matter on December 21, 2016. In a decision, dated December 28, 2016, the Hearing Officer in this matter found that the charges against the Claimant had been proven. By letter dated January 3, 2017, the Claimant was dismissed, effective immediately.

The Carrier contends that the charges against the Claimant were proven, such that it demonstrated by substantial evidence that the Claimant intentionally accepted payment for hours not worked; that he improperly used a Carrier vehicle; that he performed personal business for a supervisor on the Carrier’s time; and that he failed

to follow Carrier policy regarding the recording of his working time. The Carrier notes that the Claimant has, in fact, admitted that he is guilty of the charges here.

The Carrier asserts that the Board should reject the Organization's claim that the Claimant's due process rights were violated by the failure of the OIG to have provided a transcript or other summary of the interview conducted by the OIG with the Claimant. There is no requirement, in Rule 57 of the Parties' Agreement or in any other applicable rule or agreement, that such a transcript or summary be prepared. The content of the interview was set forth in the OIG investigative report, which was provided to the Organization. The OIG Investigator testified at the hearing and was subject to cross examination by the Claimant and his representatives. There was no showing that any alleged procedural errors were at all prejudicial to the Claimant; the Carrier notes that a Claimant bears the burden of demonstrating prejudice from a procedural error. See Public Law Board No. 718, Award No. 6 ("The Board further finds that there were no procedural defects in this case which were prejudicial to the claimants.").

The Carrier maintains that the dismissal of the Claimant is appropriate given his proven misconduct. The Board should defer to the penalty imposed by the Carrier unless the Carrier was arbitrary, vindictive, or acted in bad faith. See NRAB Third Division Award No. 11324 ("It is a well established principle of this Board that a disciplinary action will not be set aside unless the Carrier was arbitrary, vindictive or acted in bad faith."). The dismissal of the Claimant was not arbitrary, capricious, or unreasonable. The Claimant was shown to have violated Carrier policies and to have acted outside the scope of his employment in following the directions of his supervisor. He also went home, rather than back to work, after completing work for his supervisor at his supervisor's house, and charged the Carrier overtime for time that the Claimant spent at home or working at his supervisor's house. These are serious acts of dishonesty that cannot be excused by the Claimant's assertion that he was "just following orders" and which merit dismissal. See Public Law Board No. 4732, Case No. 81 (upholding dismissal of employee who claimed and received pay on two occasions when he did not work); Third Division Award No. 43897 (upholding dismissal of employee who committed payroll fraud by claiming and receiving pay for time not worked, as well as for failing to utilize the TED system); and Third Division Award No. 43896 (upholding dismissal of employee who committed payroll fraud by claiming and receiving pay for unworked regular and overtime hours, as well as for failing to utilize the TED system).

The Carrier notes that the Claimant had previously been issued a 30-day suspension in 2010 for lying about whether he had actually performed certain repair work that he had claimed to have completed. The Claimant voluntarily acknowledged his guilt in the 2010 matter, and did not challenge the imposition of the 30-day suspension.

The Carrier contends that, even if the Board were to find that the Claimant should not have been disciplined, the Claimant would be entitled only to payment for time lost less any compensation that the Claimant actually earned or should have earned through mitigation of his damages while he was held out of service.

The Organization contends that the Carrier failed to shoulder its burden of proof; specifically, that the OIG Investigator failed to document or record his interview with the Claimant and that the Investigator's testimony regarding the Claimant's statements at that interview are hearsay, which are not sufficient to meet the Carrier's burden here; and that certain cell phone location records used to establish the Claimant's alleged location on the date in question were insufficiently precise and were not explained by a knowledgeable telephone company employee. The Organization also notes that the Claimant was truthful in his OIG interview and indicated that he had been following the instructions of his supervisor with respect to the events at issue; the Claimant should not be found guilty, much less discharged, for dutifully following orders. The Organization emphasizes that Mr. Bagosy, a Project Manager who oversaw the Claimant's work, believed the Claimant to have been a good employee who was not dishonest.

The Organization asserts that the discipline here is excessive, as the proven misconduct could be appropriately addressed with coaching or counseling and, if necessary, progressive discipline in the event that the misconduct were to continue. The Organization contends, therefore, that the discipline in this case was punitive rather than corrective. See Third Division Award No. 19037 ("[I]t is well established that the purpose of administering discipline to employees for infractions of rules is not to inflict punishment but rather to rehabilitate, correct and guide employees in the proper performance of their assigned tasks. The ultimate penalty of dismissal is reserved for repeated and serious infractions of work or conduct rules. This is particularly so in the case of veteran employees such as the Claimant before us."). The Organization notes that the Claimant has no prior significant disciplinary record and 32 years of good service with the Carrier.

After careful consideration of the entire record, a majority of the Board concludes that the Carrier demonstrated just cause for the Claimant's dismissal. At the investigation, the Claimant admitted to knowingly performing work for Mr. Vogel – using Carrier vehicles and Carrier materials – during periods of time when he was compensated by the Carrier for, ostensibly, working – i.e., while on the clock – and for which he was paid by the Carrier. The Claimant also admitted to have falsely claimed payment from the Carrier for hours when he was at home and not working. Furthermore, the Claimant was shown to have failed to use the TED system to document his working time.

The claim that the Claimant's conduct should be excused because his supervisor, Mr. Vogel, directed the Claimant to assist him (Vogel) using a Carrier vehicle and Carrier materials while on the clock is rejected. Significantly, the Claimant claimed compensation from the Carrier for hours that he did not work and which were not spent assisting Mr. Vogel. While the Claimant sought to repay at least some of those hours, he did not do so until after his interview with the OIG investigator – that is, he did not do so until after he had been caught. Moreover, regardless of Mr. Vogel's directions to him, the Claimant should have understood that submitting fraudulent pay records, whether for time that the Claimant spent at home or spent assisting Mr. Vogel, was not acceptable and would subject him to severe disciplinary action. The Claimant, in particular, knew or should have known that the Carrier expects its employees to be truthful and not to falsify records as, after admitting that he had failed to perform certain maintenance as directed and for lying about whether he had performed that maintenance work, he had accepted, in 2010, a 30-calendar day suspension. Applicable precedent reflects that, in this Division and on this property, theft of time is appropriately treated as a serious matter that may provide just cause for dismissal. See Third Division Award No. 43897; and Third Division Award No. 43896. Given the Claimant's admission to the charged misconduct in this case, the Board is unpersuaded by the Organization's procedural objections on this record.

Having found that the Claimant's guilt is established by substantial evidence, including his own admissions of wrongdoing, no basis was shown to mitigate the Carrier's determination that dismissal was the appropriate penalty in this case. While the Claimant had many years of service with the Carrier and although he admitted to his misconduct here, the Claimant had received substantial prior discipline for misconduct involving dishonesty. As discussed above, the fact that Mr. Vogel directed the Claimant to engage in some of the misconduct at issue here does not, on this record, excuse the Claimant's actions or justify a reduction in the

penalty selected by the Carrier here. For these reasons, the Board finds that just cause was demonstrated for the Claimant's dismissal.

**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 8th day of October 2021.