

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44653
Docket No. SG-45520
22-3-NRAB-00003-190300

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company (Former Burlington Northern
(Railroad 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 S.J. Rodriguez, for reinstatement to service with compensation for all time lost, including overtime 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 a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on January 10, 2018. Carrier's File No. 35-18-0009. General Chairman's File No. 18-008-BNSF. BRS File Case No. 15993-BNSF. 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 Claimant was a signal maintainer headquartered at Hinsdale, Illinois. At the time of his dismissal, the Claimant had 21 years of service with the Carrier.

On November 20, 2017, the Claimant recorded “non-covered” service from 2 AM to 3:50 AM on his hours of service (“HOS”) report. When questioned by his supervisor, the Claimant indicated that he made an error because the clock in his truck was not working correctly. Supervisor Crouch told the Claimant to correct his HOS report. The Claimant submitted a corrected report which indicated that he was on duty from 8 PM on November 20 until 3:50 AM on November 21. The Claimant recorded a total of 13 hours and 20 minutes of work hours in a 24-hour period.

On November 30, 2017, the Claimant admitted to another supervisor that he knew he had exceeded his allowable hours, so he had initially tried to claim some of the time as “extended travel time.”

On December 1, 2017, the Claimant was given notice of an investigation in connection with the following charge:

An investigation has been scheduled...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged conduct and dishonesty in reporting an hours of service violation.

After a formal investigation on January 10, 2018, the Claimant was found in violation of MWOR 1.6 Conduct and was dismissed from the Carrier’s service. By letter dated April 7, 2018, the Organization presented a claim to the Carrier which was denied by letter dated May 23, 2018. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has satisfied its burden of proving the Claimant’s violation of MWOR 1.6, Conduct, specifically, subsection 4, which prohibits dishonesty. The Carrier contends the Claimant was initially dishonest when he falsely reflected his HOS on November 21, 2017, and was dishonest again

when he told his supervisor that the error was due to a faulty clock in his car. Finally, the Carrier contends that the Claimant was dishonest at the investigation when he changed his testimony numerous times to try to make it appear that he did nothing wrong.

The Carrier contends that the Claimant went out to support welders on the night of November 21, 2017, and worked in excess of the six actual hours he had left. The Claimant entered the overage as extended travel time to cover up his excess service. The Carrier contends that the Claimant's admission, as well as the testimony and evidence presented at the investigation, demonstrates the Claimant's dishonesty and violation of MWOR 1.6.

The Carrier contends that its Policy for Employee Performance Accountability ("PEPA") gives clear instruction regarding the proper discipline for violation of this rule. The Carrier contends that the Claimant's violation is considered "Stand-Alone Dismissible." Therefore, the Carrier contends, the discipline was warranted and is neither excessive nor harsh.

The Organization contends that the Carrier has not proven a violation of MWOR 1.6, as the Claimant was not dishonest, but confused. The Organization contends that the Claimant's confusion was caused by the number of hours and shifts that he worked.

The Organization contends that if the Claimant changed his story, the change was influenced by the Signal Supervisor's direction to the Claimant to change his HOS report. The Claimant spoke to the Supervisor because he was concerned with correctly completing his HOS report. The Claimant testified that he was in the field for more than 12 hours, but not all the time was covered service.

The Organization contends that the Carrier has only shown that the Claimant made a clerical error on his HOS report and has failed to show willful deceit or dishonesty. Therefore, any violation would be a standard violation according to the Carrier's PEPA, making the Carrier's imposed discipline excessive and harsh.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done

had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

The Carrier presented substantial evidence showing that the Claimant was dishonest and tending to show that the Claimant knew that he exceeded his hours of service and attempted to cover it up. The Claimant gave conflicting explanations for why his HOS report was inaccurate. It is the Hearing Officer's responsibility to make credibility determinations and this Board must defer to them unless they are substantively unreasonable. Finding no evidence that the Hearing Officer's credibility determinations were not grounded in the on-property record, it is our duty to accept those findings.

The remaining question is whether the penalty of dismissal was excessive or harsh for the proven misconduct. The Carrier's PEPA provides that dishonesty is a standalone dismissible offense. This principle has been upheld by many boards on review. Although the Claimant was a long-term employee, the Carrier's decision was not unreasonable in light of his violation, his disciplinary record, and the Carrier's policy. We see no reason to disturb it.

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 15th day of December 2021.