

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44659
Docket No. SG-46262
22-3-NRAB-00003-200674**

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 B.O. Mashburn, 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 March 19, 2019.” Carrier’s File No. 35-19-0021. General Chairman’s File No. 19-040-BNSF-121-T. BRS File Case No. 16261-BNSF. NMB Code No. 106.”

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.

At the time this dispute developed, the Claimant was assigned as a Mobile Inspector headquartered at Alliance Yard, in the Carrier's Signal Department in Haslet, Texas. On February 13, 2019, the Claimant attended a safety meeting that ended at approximately 1300. The Claimant asked Supervisor Ryan Stethem if he could leave early that day to go and retrieve his DOT medical card. Supervisor Stethem told the Claimant to return to the crossing where he had previously performed a cutover, as it was too early to leave for the day. He also told the Claimant to leave enough time in the day to retrieve his medical card.

The next morning, approximately 1½ hours after the Claimant's regular reporting time, Supervisor Stethem saw the Claimant's company truck in the parking lot but didn't see the Claimant anywhere. He called the Claimant to ask him his whereabouts. The Claimant told Supervisor Stethem that he was at McElroy Crossing. At approximately 0920, just 50 minutes later, Supervisor Stethem called the Claimant again. The Claimant reaffirmed his previous statement about being at McElroy crossing, stating that he was with employee Licon. At approximately 0940, the Claimant pulled into the parking lot where Supervisor Stethem and Supervisor Tiffin were standing outside. The Claimant was questioned by Supervisor Stethem once again on his whereabouts. The Claimant said that he went to pick up his DOT medical card, stopped to get breakfast, and then at McElroy crossing.

Once Supervisor Stethem contacted employee Licon, he learned that the only contact Licon had with the Claimant was via a phone call at 0930 and that he had not been at McElroy crossing that morning. Supervisor Tiffin asked the Claimant to produce a written statement. His statement contradicted his story from earlier that morning.

On February 15, 2019, 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 failure to report for duty on time and when contacted you

were dishonest about your whereabouts and what you had been working on, and failure to enter your time prior to the end of your shift as instructed on February 14, 2019.

After a formal investigation on March 19, 2019, the Claimant was found in violation of MWOR 1.6, Conduct, and MWOR 1.13, Reporting and Complying with Instructions, and was dismissed from the Carrier's service.

By letter dated June 11, 2019, the Organization presented a claim to the Carrier which was denied by letter dated August 9, 2019. 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 presented substantial evidence that the Claimant failed to follow the instructions given to him by Supervisor Stethem and that when he was questioned about it, he lied. The Carrier contends that the Claimant failed to report for duty on time and then was dishonest about his whereabouts.

The Carrier contends that there is no dispute that the Claimant violated the rules because he admitted to doing so. The Claimant eventually owned up to his dishonesty, but his initial dishonesty cannot be overlooked.

The Carrier contends that the investigation was held in a fair and impartial manner. Further, BNSF's Policy for Employee Performance Accountability ("PEPA") classifies this type of violation as Stand Alone Dismissible. The Carrier contends that the assessed discipline was not excessive, arbitrary, or unwarranted, when the nature of the offense, the Claimant's records, arbitral precedent, and PEPA are considered.

The Organization contends that the Claimant was performing company-related duties on the morning in question, but the Carrier arbitrarily charged the Claimant for allegedly claiming time not worked. The Organization contends that the Carrier apparently took issue with the Claimant stopping to get breakfast once he had picked up his medical card prior to arriving to his headquarters.

The Organization contends that the Claimant was charged with violation of MWOR 1.6 and MWOR 1.13 for improperly inputting payroll. The Organization contends that it is clear the Claimant's actions were not in violation of these Rules.

The Organization contends that the Carrier has overcharged the Claimant hoping that one charge will stick, but the Claimant did not improperly input his time.

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.

Here, the Board finds that the Carrier has met its burden of proving the Claimant's violations with substantial evidence. The Claimant admitted his dishonesty. Where there is an admission of guilt, there is no need for further proof.

Under the Carrier's Discipline Policy, Dishonesty is a standalone dismissible offense. Having found that the Carrier met its burden of proof with respect to this charge, we find no reason to disturb the disciplinary penalty.

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.