

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44660
Docket No. SG-46263
22-3-NRAB-00003-200721**

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

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(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 D.L. White, 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 April 9, 2019. Carrier's File No. 35-19-0022. General Chairman's File No. 19-038-BNSF-87-B. BRS File Case No. 16258-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 an Electronic Technician headquartered at Glasgow, Montana in Carrier's Signal Department, the lone member of his gang.

On Monday, March 25, 2019, Supervisor Johnson informed the Claimant that on March 28, 2019, he would need to assist Signal Maintainer Kelly with an annual crossing inspection. On March 27, the Claimant emailed Johnson informing him that due to a broken rear axle on his company vehicle, he would be using his personal vehicle to travel to rules class on March 28. As he wasn't aware of the rules class, Johnson emailed a reply telling the Claimant to meet Kelly at the Glasgow Signal Office at the start time on March 29 and ride with him to complete the annual crossing inspection. After his email went unanswered, Johnson sent a text message to which he received a "read receipt." The Claimant did not respond.

On March 29, Johnson reported to the office at approximately 0700 to conduct his morning conference call. The Claimant did not attend the conference call and did not appear to meet and ride with the Signal Maintainer. At approximately 0830, the Claimant called Johnson to explain why he had not met Kelly. Johnson did not believe the Claimant's explanation.

Later, Johnson observed the Claimant's residence from the Saco Signal Office parking lot. He saw that the Claimant's personal vehicle did not leave his residence until approximately 1530, when the Claimant drove to the Saco Signal Office. After roughly 10 minutes inside, the Claimant returned and drove his personal vehicle away.

On Monday, April 1, 2019, Johnson audited the Claimant's payroll entry for Friday, March 29th. He found that the Claimant had submitted 8.5 hours of work for that day (8 straight time hours and 30 minutes for lunch).

On April 1, 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 misconduct when you falsified payroll records on March

29, 2019, while assigned as a Signal ET headquartered in Glasgow, MT. The date BNSF received first knowledge of this alleged violation is April 1, 2019.

After a formal investigation on April 9, 2019, the Claimant was found in violation of MWOR 1.6, Conduct, and was dismissed from the Carrier's service.

By letter dated June 24, 2019, the Organization presented a claim to the Carrier which was denied by letter dated August 23, 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 falsified his payroll on March 29, 2019. The Carrier contends there is no dispute that the Claimant violated the rule because he admitted to doing so. These facts indisputably are in violation of the MWOR 1.6 Conduct, Dishonesty. The Carrier contends that numerous awards support that where there is an admission of guilt there is no need for further proof.

The Carrier contends that while the Claimant did his best to justify his reasoning, he admitted that he falsely reported his time. He testified that he used the time to make care arrangements for his father but submitted payroll records that specified that he was on duty. The Claimant characterized his actions as a mistake and admitted that he should have asked for permission first. However, there is no question that he deliberately violated the rules. The Carrier contends that accountability is crucial for employees like the Claimant who are responsible for their own payroll.

The Carrier contends that the Claimant was provided a fair and impartial investigation. Further, the Carrier contends that BNSF's Policy for Employee Performance Accountability ("PEPA") classifies this type of violation as Stand Alone Dismissible. Therefore, the assessed discipline was not excessive, arbitrary, or unwarranted.

The Organization contends that on March 29, 2019, the Claimant was performing company related duties with his personal vehicle. The Carrier took issue with the Claimant stopping at his residence prior to the end of his workday and arbitrarily charged the Claimant with claiming time not worked. The Organization contends that the Carrier has failed to present substantial evidence that the

Claimant was dishonest or in violation of MWOR 1.6. The Organization contends that the Claimant was following instructions given by the previous Supervisor. If those instructions were no longer valid, the Carrier could have easily addressed this with progressive steps of discipline. The Organization points out that the Claimant had 29 years of service with the Carrier and no prior discipline on his record.

The Organization contends that the discipline issued by Carrier is disparate compared to that given to others and must be rescinded. The Board has held numerous times that it is an abuse of Carrier's discretion to discipline one employee and not another for the same conduct.

Finally, the Organization contends that the discipline is harsh and excessive. The Board has held in numerous Awards that it is an abuse of Carrier's discretion when discipline is imposed to punish the employee and not to correct misconduct.

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.

MWOR 1.6, Conduct, provides that "Employees must not be...(4) Dishonest." The Claimant here was charged with Dishonesty with respect to his payroll records on March 29, 2019. The Claimant has admitted his violation. Numerous Boards have held that where there is an admission of guilt, there is no need for further proof. The Carrier has presented substantial evidence of the Claimant's violation.

The remaining question for this Board is the appropriateness of the penalty of dismissal. The Carrier's PEPA and numerous boards have confirmed that dismissal is not an excessive penalty for dishonesty, even for a first offense, and even for a long-term employee like the Claimant. Here, the evidence shows that the Claimant's dishonesty was deliberate. The Carrier need not tolerate dishonesty, which is detrimental to the employment relationship. The Organization argued that the Claimant is being treated disparately when compared to other employees but failed to present sufficient proofs to support this affirmative defense. Under the circumstances of this case, we find no justification to set aside the Carrier's decision.

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.