

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44806
Docket No. SG-46677
23-3-NRAB-00003-210016**

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**

STATEMENT OF CLAIM:

“Claim on behalf of K.R. Gray, 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 August 14, 2019. Carrier’s File No. 35-19-0037. General Chairman’s File No. 19-067-BNSF-129-S. BRS File Case No. 16247-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.

The Claimant began in the Carrier's service on April 14, 1997. From June 3, 2019, through June 16, 2019, Claimant was working as a Signal Inspector, headquartered at Springfield, Missouri, in Carrier's Signal Department. An unrelated incident led to the investigation of the Claimant's payroll entries from June 3, 2019 through June 16, 2019. It appeared that the Claimant had entered pay for time he had not actually worked. For instance, the Claimant had gone to a recreational facility but recorded the time as work time. The Claimant alleged that he was utilizing a compensatory time system.

On July 23, 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 dishonesty and theft when you allegedly falsely reported time between June 3, 2019, and June 16, 2019 on the Thayer North subdivision utilizing Company vehicle 25655 while assigned as an inspector. The date BNSF received first knowledge of this alleged violation is July 19, 2019.

After a formal investigation on August 14, 2019, the Claimant was found in violation of MWOR 1.6 Conduct and the BNSF Company Vehicle Policy and was dismissed from the Carrier's service.

In a letter dated November 7, 2019, the Organization appealed the Carrier's discipline. The Carrier responded to and denied the appeal in a letter dated January 6, 2020. Following discussion of this dispute in conference, the positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Carrier contends that it has presented substantial evidence showing that the Claimant was in clear violation of MWOR 1.6- Conduct. The Carrier contends that the exhibits and testimony show that the Claimant falsified his payroll. On several dates between June 3, 2019 and June 16, 2019, the Claimant paid himself for time not worked. The Carrier presented evidence showing the Claimant's actual whereabouts during the disputed periods, which were unrelated to his duties.

In addition, the Carrier points out that the Claimant admitted to violating the rule because he admitted to submitting time for periods when he was not at work, but argued that he was using "comp time." The Claimant stated that he made a mistake

by thinking that the previous “gentlemen’s agreement” allowing the “compensatory time” practice would continue.

The Carrier contends that an employee such as the Claimant who is responsible for their own payroll must be held accountable. Although the Claimant argued that he had been previously permitted to use an informal “comp time” system, he provided no verification of any such practice.

The Carrier contends that the investigation was held in a fair and impartial manner.

Finally, the Carrier contends that since the facts are unrefuted, there can be no question that the penalty of dismissal was appropriate. Dishonesty is frequently seen as a dismissible offense and there is nothing in the record that would suggest that the penalty was excessive or arbitrary.

The Organization contends that the Carrier has failed to show that the Claimant’s actions were in violation of the Carrier’s rules. The Organization contends that the Carrier has failed to show that the Claimant was dishonest or purposely lied to his supervisor. The Organization contends that the Claimant’s supervisor alluded to being aware of the practices that the Claimant utilized, such as the staging of the Carrier’s vehicle.

The Organization contends that the Carrier failed to show that none of the Claimant’s supervisors were aware of using “comp time” when it called only one of the Claimant’s three supervisors as a witness. The Organization contends that the Claimant showed that his supervisors knew and permitted use of “comp time.” The Organization contends that if the practice was to be discontinued, the Carrier should have addressed it with management before imposing discipline.

The Organization contends that the discipline was excessive, harsh, and unjust. The Claimant had 22 years of service with the Carrier and had no disciplinary action for ten years. The Organization contends that this matter should have been addressed with progressive discipline.

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 Claimant was charged with dishonesty and violation of the Carrier's Vehicle Policy, which reads, in part:

IV. Policy Requirements

- A. Company Vehicles may be operated only by BNSF employees and only for business-related purposes. Requirements for operating Company Vehicles and permitted purposes are described in the Company Vehicle Operation and Maintenance Corporate Rule.**

The Claimant does not deny that he operated the Carrier's vehicle for non-business related purposes and that he submitted time to be paid for periods he was not performing work for the Carrier. His explanation was that he had been permitted to use an informal "comp time" system by his supervisors.

As a result, the Claimant has admitted his violations. He clearly requested pay for time he didn't work and used the Carrier's vehicle for other than business-related purposes. Where there is an admission of guilt, there is no need for further proof. This Board finds that sufficient evidence exists to support the findings against the Claimant.

As for Claimant's assertion that this practice was permitted by his supervisors, it was the responsibility of the Hearing Officer, as the trier of facts, to determine the credibility of the witnesses and to weigh the competing testimony. This Board will generally defer to that judgment, unless there is compelling evidence in the record not to. We can find no reason in the record to disregard those findings.

As for the penalty, it is generally accepted that dishonesty is a dismissible offense. While Claimant's long seniority was a factor to be considered, it was insufficient reason to depart from the well-settled precedent that dismissal is appropriate for dishonesty, even if it had been a first offense.

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 28th day of October 2022.