

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45148  
Docket No. MW-47722  
24-3-NRAB-00003-230026**

**The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (former Burlington Northern  
(Railroad Company)**

**STATEMENT OF CLAIM:**

- (1) The discipline (dismissal) imposed upon Mr. J. Carsner, by letter dated July 1, 2021, for alleged violation of MWOR 1.6 Conduct for falsification of two (2) FRA inspection reports was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File B-M-3549-Z/11-21-0506 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Carsner shall now be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated in accordance with Rule 40G of the Agreement.”**

**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.**

**Factual Background**

Claimant James Carsner held the position of Track Inspector in the Carrier's Maintenance of Way Department for approximately 16 years prior to being dismissed for falsification of two Federal Rail Administration (FRA) inspection reports.

On June 7, 2021, Carrier GPS records reflect that the Claimant drove his company vehicle from the depot located in Glendive, Montana at 8:34 AM and did not return to the depot for the remainder of the day. Later that evening, the Claimant submitted FRA inspection reports for 2 switches in the Glendive Yard—Switches 103 West and 104 West. The GPS records for the Claimant's work vehicle reveal that once he left the depot on the morning of June 7, the vehicle did not travel to the location of either of the two switches. The Claimant's supervisor, Roadmaster Levi Burch, found the discrepancy between the Claimant's vehicle's GPS coordinates and the inspection report the following day on June 8, 2021.

On June 9, 2021, the Carrier issued a notice for investigation to ascertain whether the Claimant had falsified 2 FRA inspection reports. The investigation was conducted on June 17, 2021 in Glendive, Montana. When asked about the inspection reports during the investigation, the Claimant admitted not performing the inspections and falsifying the 2 FRA reports:

I did not perform the inspection...I did lie. I made up two inspection reports I didn't need to do, and I don't want to lose my job over this. I'm willing to take my punishment...I feel bad for what I've done.

On July 1, 2021, the Carrier dismissed the Claimant for falsifying 2 FRA reports inspection reports. The investigating officer concluded that the Claimant violated Maintenance of Way Operating Rule (MWOR) 1.6:

**1.6 Conduct**

Employees must not be:

1. Careless of safety of themselves or others.
2. Negligent
3. Insubordinate
4. Dishonest

5. Immoral
6. Quarrelsome or
7. Discourteous.

The dismissal notice also states that in assessing the discipline of dismissal, the Carrier considered the Claimant's prior disciplinary record. The Organization appealed the discipline timely. Failing to resolve this claim on property, the Organization referred this dispute to the Board for adjudication.

#### **Carrier's Position**

The Carrier argues that the evidence obtained during the investigation supports its dismissal of the Claimant for falsifying FRA reports. The Claimant admitted his wrongdoing, and discipline was imposed consistent with the Carrier's Policy for Employee Performance and Accountability (PEPA), which calls for dismissal of employees who engage in dishonesty concerning any job-related subject.

#### **Position of Organization**

The Organization argues that the evidence presented at the Carrier failed to satisfy its burden of proof because there is insufficient substantial evidence supporting the Carrier's decision to discharge.

The Organization also argues that the discipline imposed against the Claimant was excessive and unwarranted. The Organization asks that its claim be sustained and that the Claimant be restored to his position and made whole.

#### **Analysis**

The Board sits as an appellate review forum in discipline cases. As such, it does not weigh the evidence *de novo*. The Board's function is not to substitute its judgment for that of the Carrier, nor decide this matter in accord with what the Board believes should have been decided had it been the Board's decision to make. Rather, the Board's inquiry is to determine whether sufficient evidence exists to sustain the discipline imposed by the Carrier. If there is sufficient evidence supporting the Carrier's decision, then the Board cannot disturb the penalty unless the record reflects that the Carrier's decision was unjust, unreasonable or so arbitrary as to constitute an abuse of discretion.

In discipline cases, the burden of proof is on the Carrier to establish that substantial evidence supports the investigating officer's decision to impose discipline. The degree of proof required is substantial evidence, which is more than a mere scintilla but less than a preponderance.

The Board has carefully studied the record, particularly the transcript of the June 17, 2021 investigation, and has carefully evaluated and reviewed the arguments contained in the parties' submissions. In addition to the evidence presented by the Carrier, the Claimant also admitted not telling the truth about his whereabouts and that he falsified the FRA reports. The Board finds that there is sufficient evidence to support the Carrier's charges against the Claimant. It has been held consistently by this and other Boards that dishonesty constitutes sufficient grounds for dismissal irrespective of the employee's past record or length of service. (See e.g., Third Division Award 30429).

Regarding the level of discipline, the Board will not substitute its judgment for that of the Carrier, especially as it appears that the Carrier properly considered the Claimant's 16 years of service and his performance and disciplinary history.

**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 22<sup>nd</sup> day of February 2024.