

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45157
Docket No. MW-47489
24-3-NRAB-00003-220550

The Third Division consisted of the regular members and in addition Referee Jeanne M. Vonhof when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1) The discipline (dismissal) imposed upon Mr. T. Brabec, by letter dated February 12, 2021, for violation of MWOR 1.15 Duty-Reporting or Absence and MWOR 1.6 Conduct was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-21-D070-8/10-21-0100 BNR)
- 2) As a consequence of the violation referred to in Part (1) above, Claimant T. Brabec shall 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.

At the time of the investigation on January 25, 2021, the Claimant had 29 years of service with the Carrier, and was serving as a foreman for Gang TMGX1819. During the investigation, substantial and undisputed evidence was entered establishing that for the dates November 24, 25, and 30, 2020 the Claimant reported time worked by himself and his gang that they did not work. The Carrier entered GPS evidence demonstrating that the truck assigned to this gang was parked at the hotel and not at the worksite for hours that the Claimant originally reported his gang was working. The Claimant and his crew left work early without authorization from their supervisor on all three days. When the Road Manager confronted the Claimant with the GPS information, the Claimant admitted that the hours were entered incorrectly and that the gang were not working for some of the hours reported; he revised the hours to those actually worked. At the hearing, the Claimant agreed that he had entered the hours incorrectly and that he corrected them when it was brought to his attention.

The Organization argues that it was common practice for foremen to enter the time records in the morning for their scheduled work hours and then adjust the hours as needed when the day was over. The Claimant testified that he was following that practice and forgot to change the records later. However, the records do not support this explanation because he recorded the work times in the afternoon on two days and a week later on the third. In each case the Claimant should have known the actual hours or close to them at the time he entered the records. Furthermore, the Claimant only corrected them after the Carrier's supervisor raised the issue with him. An inference of dishonest intent may reasonably be made by the Carrier under these circumstances.

The Claimant admitted to the conduct in question at the hearing. He acknowledged that his conduct was dishonest, bringing him in violation of MWOR Rule 1.6 Conduct – Dishonesty. In addition, the Claimant was charged with violation of MWOR Rule 1.15, which states, in relevant part, “Employees must ... spend their time on duty working only for the railroad. Employees must not leave their assignment ... without proper authority.” There is substantial evidence in the record that the Claimant violated these rules. He left work early without any authorization on three days, on one date leaving three and a half hours early and claimed time for himself and his crew for the entire shifts for all three days. He claimed pay for hours not worked, and because he was the Foreman, he also claimed pay improperly for the rest of his crew.

The Organization made several procedural objections, alleging that notice was vague and inaccurate; that an additional rule violation was added after notice; that certain relevant witnesses were not made available; that the Hearing Officer was biased

as he did not allow the Organization's representative a postponement to gather further evidence.

The Notice identified the pay period in question and, within that pay period, the Claimant knew which dates he had been asked to revise his incorrectly reported hours. Because the Claimant admitted that he had reported time for hours which were not actually worked on those three shifts, there was no dispute to which the witnesses could have added relevant information. The Hearing Officer also offered to try to reach witnesses by telephone, but the Union representative declined. On all of the evidence, the Board is not persuaded that there were any procedural irregularities that prevented the Claimant from obtaining a fair hearing or otherwise so violated his due process rights that the Board should be prevented from considering the claim on its merits.

With regard to the choice of the penalty, the Carrier's Policy for Employee Performance Accountability (PEPA), classifies the Claimant's violation as a stand-alone dismissible offense in Section IV.D.1.b:

Dishonesty about any job-related subject including, but not limited to, falsification or misrepresentation of an injury, abuse of FMLA leave or other leave privileges.

Dishonesty is a dischargeable offense even absent a prior disciplinary history. The employment relationship is undermined without trust. Accurately reporting hours worked is critical in the railroad industry, where work is often geographically remote with little direct supervision. Under these circumstances the Board cannot conclude that the penalty imposed was unduly harsh or excessive.

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 22nd day of February 2024.