

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45161
Docket No. MW-47583
24-3-NRAB-00003-220636**

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

**(Brotherhood of Maintenance of Way Employees 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. H. Miller, by letter dated February 4, 2021, for violation of MWOR 1.6 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-21-D070-11/10-21-0141 BNR**
- 2) As a consequence of the violation referred to in Part (1) above, Claimant H. Miller 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.

In the relevant time period Claimant H. Miller was newly assigned to a Group 2 Machine Operator position on Gang TMOX7005 out of Longmont, Colorado. The Claimant had approximately fifteen years of service with the Carrier.

The Carrier charged the Claimant with filing erroneous personal vehicle mileage reports and submitting records for hours of travel to which he was not entitled, on 30 (thirty) occasions between August 13 and November 12, 2020, while working out of Longmont, Colorado. After an investigation, the Carrier concluded that the Claimant's conduct constituted dishonesty in violation of MOW Rule 1.6, and he was dismissed via letter dated February 4, 2021.

The Organization argues that the Claimant was denied a fair and impartial hearing in this case because the investigation was not held in a timely manner. In addition, according to the Organization, the Carrier failed to notify the Claimant at least five days in advance of the hearing because the Claimant did not receive the notice letter five days in advance. The Organization also argues that the hearing officer did not admit all relevant information at the hearing. Finally, the Organization contends that the Carrier has not met its burden to prove that the Claimant had intent to defraud the Carrier, but rather that he simply made an error, mistakenly believing that his position/machine was headquartered in Cheyenne, Wyoming.

Addressing the Organization's procedural claims, the Board notes that the hearing was postponed by agreement between the parties, which provided additional time for the Organization to prepare. The Claimant admitted in the investigation that he entered his mileage from Cheyenne, even on days when it would have been more beneficial for him to claim Longmont as the headquarters. The Carrier did not refute this testimony, and so it stands, even without the additional documentation the Organization sought to enter. The Board concludes that there are no procedural issues which rise to the level that prevent the claim from being considered on the merits.

The Carrier has provided substantial evidence that the Claimant's time and mileage records were entered by the Claimant and that those entries claimed mileage and time to which he was not entitled, based upon the headquarters to which his position was assigned. However, the entries were consistent with the Claimant's testimony that he had an erroneous understanding of where his headquarters was located. The entries

consistently support his testimony in this regard; they do not represent random attempts to slip in extra mileage or overtime. He did not enter his time and mileage to his financial benefit when mileage calculated from the actual headquarters would have brought him more time and mileage.

In addition, there is evidence in the record that at least one Carrier representative told the Claimant when he bumped into the job that the machine was headquartered in Cheyenne. The Claimant bumped into the position by identifying another employee, not the position, machine number or headquarters. He testified that his supervisors knew that he did not wish to be headquartered in Longmont for personal reasons when they asked him to take the position. While he bears responsibility for entering his own time correctly, there is convincing evidence that the Claimant and two supervisors mistakenly believed that the Claimant's machine, like the other machines on the Front Range, was headquartered in Cheyenne. There was no indication on the screen where he entered his time that his position's headquarters was Longmont. The Claimant's supervisors never questioned the Claimant's erroneous time and mileage reporting and did not correct him as to his headquarters.

In addition, the investigator who confronted the Claimant with his findings reported that the Claimant immediately stated that he thought he was headquartered in Cheyenne. His statement regarding this belief was not an after-the-fact excuse that he concocted. He claimed his mileage from Cheyenne openly and consistently, even when it was to his detriment financially.

The Claimant admitted during the investigation that he made a mistake and that he could have and should have investigated the basic details of the job into which he was bumping. His failure to do so led to him claiming pay to which he was not entitled. Therefore, the Carrier did not err in assessing discipline in this case. However, considering the mitigating circumstances in this case, the Board concludes that the penalty of dismissal is excessive and harsh. The Claimant shall be reinstated, but without compensation. His dismissal shall be reduced to a suspension, with a 12-month review period from the date of his return to work.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of February 2024.