

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45307
Docket No. CL-48003
24-3-NRAB-00003-210232

The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.

(Transportation Communications Union – IAM
PARTIES TO DISPUTE: (
(Wisconsin Central LTD. / Former Duluth, Missabe and
Iron Range Railway

STATEMENT OF CLAIM:

“1. Carrier acted in an unjust and unfair manner in violation of the TCU Ore Dock Agreement when, after formal investigation held on December 6, 2019, Katheryn May was given a Dismissal in a letter dated December 11, 2019.

2. Carrier shall now be required to:

- Remove all references of claimant’s charges, investigation, and discipline assessed from Claimant’s personal record.
- Provide reimbursement for lost wages from November 21, 2019 and continuing until reinstatement.
- Provide reimbursement for travel mileage to and from the investigation site at the government rate per mile from the Claimant’s residence.”

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.

On November 20, 2019, Claimant Katheryn May received a Letter of Abolishment, informing her that her position of DM-Foreman Storehouse, headquartered in Duluth, Minnesota, would be abolished effective November 22, 2019, at the end of her shift. The Abolishment Notice was subsequently revised to make the abolishment effective end-of-shift November 25, 2019.

On the morning of November 21, 2019, Claimant approached her supervisor to ask if she could visit another Carrier facility, Proctor, where junior employees were assigned, so she could decide whether to exercise seniority there. Claimant's manager called a Labor Relations manager regarding that request, and when the LR manager called back, she informed Claimant that site visits such as Claimant had requested were not permitted, and that Claimant could obtain a written job description for the positions in question.

Later that day, Claimant took a Company vehicle to Proctor, where, among other things, she met with two of the junior employees and discussed their duties. When Claimant returned to Duluth, she met with an Assistant Port Manager, at which time she told him she had stopped by Proctor Canvas, a vendor in Proctor. When Claimant's manager made inquiries with that vendor, the vendor advised that it had no knowledge of Claimant visiting. Claimant's manager also reviewed financial records, which indicated no recent transactions with that vendor.

By letter dated November 27, 2019, Claimant was notified to attend a hearing to develop the facts and place responsibility, if any, when she allegedly:

- 1) Failed to follow a specific directive at approximately 0826 hours that terminal site visits are not allowed; and/or
- 2) Performed a Proctor terminal visit without proper authority; and/or
- 3) Used a Company Vehicle . . . without proper authority; and/or
- 4) Left work without proper authority/permission; and/or
- 5) Conducted personal business while on duty and/or on Company property; and/or
- 6) Provided false and/or misleading statement(s) to the Company Official(s) concerning matters under investigation at approximately 14:30 hours.

The hearing was held December 6, 2019, at which Claimant's manager, the Assistant Port Manager, the two junior Proctor employees, an employee who gave Claimant the vehicle keys, and the LR manager all testified, as did Claimant. Following the hearing, Claimant was found to be in violation of CN Docks Manager Bulletin 01-

18: #2, #3, #7, #8, #12, the Code of Business Conduct and CN Vehicle Authorization and Use Policy, and by notice dated December 11, 2019, she was dismissed from service.

The Organization submitted the instant claim, which the parties handled on the property according to the applicable agreement. The matter now comes to us for resolution.

The Organization challenges the discipline assessment, contending that the Carrier failed to prove the charges against Claimant, and that the Carrier did not have grounds for dismissal. With respect to the first charge of failing to follow a specific directive that site visits are not allowed, the Organization states that Claimant testified she was performing company business as part of her trip to Proctor and that she only had brief discussions with two employees whose jobs were located there. It asserts that the testimony of those two employees confirms the visits were brief, lasting 20-30 minutes or 30-35 minutes.

Regarding the charge that Claimant performed a Proctor terminal site visit without authority, the Organization argues that Claimant understood the directive to be different from what the Carrier believed it to be. It states that Claimant believed that “shadowing” and “in-person/on-hand” meant working for an extended time in a form of training, and that was what the Carrier had prohibited, but that Claimant believed talking with the employees for a short time was something different. The Organization asserts that Claimant simply had a misunderstanding on the directives.

With respect to the charge of using a company vehicle without proper authority, the Organization states that Claimant, and others in their roles as Foremen, have typically used company vehicles as part of their jobs without seeking permission each time. It cites testimony from the Assistant Port Manager that employees on the Duluth property take company vehicles to get parts in the interest of completing their jobs, as well as testimony that it is not always necessary to ask for authorization before taking a vehicle. The Organization adds that, in any event, Claimant did ask for permission when she told the employee from whom she obtained the keys that she was using the vehicle.

On the charge that Claimant left work without proper authority/permission, the Organization states that she was at work the entire time. It states that part of her job is to visit vendors and other employees at other locations. It avers that she was on company property, which does not constitute leaving work.

Next, the Organization addresses the charge that Claimant conducted personal business while on duty and/or on Company property. It notes that displacements and abolishments are common in this industry, and it states that Claimant examining her options for bumping does not constitute “personal business.” It argues that, to the contrary, she was assessing where she could work for the Carrier, and it avers that this is a normal and necessary step in a bid and bump work environment. It cites testimony from Carrier witnesses that it would be normal for an employee whose job has been abolished to be curious about where other jobs are and what duties they perform.

The Organization also asserts that Claimant did perform multiple other functions of her job on the trip she made that day. It states that she had keys made for the Assistant Port Manager at a hardware store, that she got a fuel report for another employee, and that she contacted some vendors, and attempted to visit others. The Organization cites Claimant’s testimony that she had intended to visit Proctor Canvas, but that she saw they were busy when she drove by.

The Organization also notes Claimant’s testimony that she met with a Regional Inventory Manager when she was in Proctor. It cites her testimony that they had an in-depth conversation regarding end-of-year inventory items, and it avers that Claimant was attempting to clean up loose ends before her job was abolished.

The Organization argues that the evidence does not prove Claimant provided false and/or misleading statements to Company officials. It denies that Claimant used the meeting with the Regional Inventory Manager or the other work tasks she performed as subterfuge for a site visit. The Organization also claims that Claimant was forthright during her discussion with the Assistant Port Manager regarding Proctor Canvas, as it was her intention to go there until she saw that they were busy and she needed to get back to Duluth.

The Organization also asserts that, even if the Carrier had met its burden of proof, the Carrier’s decision to dismiss Claimant is harsh, excessive and unwarranted on the facts of this case. It cites prior awards which have reduced discipline assessments where a charged employee’s actions were based on a misunderstanding about a particular directive, and it states that the Carrier arbitrarily ignored principles of corrective discipline in assessing an excessive punishment. The Organization further notes that Claimant had no previous discipline on her record. It concludes that the Carrier’s assessment was arbitrary and capricious, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment, stating that the record contains substantial evidence to support the finding of guilt. It asserts that Claimant's actions constituted Level 4 infractions under the Company Discipline Policy, and that dismissal was appropriate for such infractions and in light of Claimant's overall work record over her two years, eight months of service.

The Carrier states that it is undisputed that Claimant admitted going to the Proctor Shop location for her site visit after repeatedly being told by three Carrier officials that this was not authorized. It points to her testimony that she had met with the Assistant Port Manager on November 20, 2019, and that he told her she should not visit Proctor. It also cites her testimony when she was asked if her purpose was to find out about the responsibilities of the junior employees in an effort to make an informed decision about her displacement move, that it was not her "hundred percent objective," and that she had several things to do at Proctor, including finding the physical location of the assignments.

The Carrier also states that Claimant admitted she used the Carrier vehicle for her own personal business, quoting her testimony, "Popping in for visiting and to talk to those two was personal, yes." It asserts that Claimant therefore improperly used Company assets during the unauthorized site visit.

The Carrier further contends that Claimant provided false information to the Assistant Port Manager when she told him she went to Proctor to meet with vendor Proctor Canvas. It points to testimony that she never physically made it to that company, and it contrasts that with the manager's testimony that she said she did stop at Proctor Canvas on her trip. The Carrier states that the record confirms that Proctor Canvas had no knowledge of Claimant's alleged visit, and that the Carrier had not had business or financial transactions with that vendor for over two years. The Carrier avers that Claimant's false statements in that regard caused additional unnecessary effort and disruption to normal business.

With respect to Claimant's testimony regarding her visit with the Regional Inventory Manager, the Carrier states that Claimant's testimony is inconsistent. It notes that Claimant testified that she had that meeting between 12:10 and 12:30, but that she later testified that between noon and 12:30, she was getting keys made at the hardware store, having a conversation with a vendor, and working on a fuel report. The Carrier observes that Claimant conceded she did not have a planned meeting with the Regional Inventory Manager, that the manager was not expecting her, and that she only

had hopes of catching the manager in her office to discuss matters that hadn't been completed during a previous phone call. The Carrier posits that any meeting with that manager was merely a subterfuge so that Claimant could do the site visit with the other clerks.

The Carrier submits that Claimant's unauthorized site visit cause disruption to the workplace and impeded the other employees from performing their duties. It denies that this is an insignificant matter or that Claimant could choose to disregard explicit instructions to refrain from performing a site visit. It points out that both of the employees at Proctor reported Claimant's visit to their supervisors and that they both testified that Claimant's visit took time away from their duties.

The Carrier states that the reasons Claimant alleged for her visit to Proctor were contrived, and that there was no real reason for Claimant to be at the Proctor Shop. It states that there was no work being performed, and it cites the testimony of the other clerks that it was clear the purpose of Claimant's visit was to get information of what they do so Claimant could make a decision about a displacement.

With respect to the discipline assessment, the Carrier states that there is no basis to question its judgment. It avers that Claimant committed multiple serious infractions, including dishonesty, conduct which breaches the trust necessary in the employee-employer relationship. It cites prior awards which have upheld dismissal for such conduct, regardless of an employee's tenure or prior record. The Carrier states that there was nothing arbitrary or capricious about the assessment here, and it requests that the claim be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that the record contains sufficient evidence to support the finding of guilt in this matter. The Carrier's burden in matters such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Here, we believe the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant was in violation of the cited rules when she took an unauthorized visit to Proctor after having been told by multiple Carrier officers that a site visit was not permitted. Claimant's immediate supervisor confirmed that Claimant had asked if she could go to Proctor to check with the employees she

might bump, but that Claimant was specifically told she could not do so during the call with Labor Relations on the morning of November 21, 2019. The Assistant Port Manager also testified that he told Claimant on November 20, 2019, that she could not go to Proctor prior to being bumped. Claimant herself testified that, after the call with Labor Relations, “I did understand that going to the Proctor site visit for an in-person on-hand job opportunity was not advised and/or given direct permission to do so.”

While Claimant later contended that her primary reason for going to Proctor was to meet with the Regional Inventory Manager, the Carrier was within its rights to find such testimony to lack credibility, and as an appellate body, we are not in a position to overturn that credibility assessment. We are especially reluctant to do so considering that Claimant admitted that the manager did not expect her or know she was coming, and considering the lack of detailed rationale for why an in-person meeting was necessary.

We find no reason to disturb the Carrier’s conclusion that Claimant’s trip to Proctor was motivated by her previously expressed desire to obtain information about the jobs from the current incumbents, after just being told not to do so. There is no question that Claimant met with both of those employees and questioned them about their job duties. It is also clear that Claimant disrupted the duties of the other employees for her own benefit. Claimant admitted this was the first time she had met with the other clerks on a visit to Proctor, and that these meetings constituted personal business (“Popping in for visiting and to talk to those two was personal, yes.”)

Claimant’s credibility is also undermined, in our view, by her statements to the Assistant Port Manager that her use of the Company vehicle included visiting Proctor Canvas. When faced with evidence that there were no recent records of the company dealing with that vendor, and with statements from vendor personnel that there was no recollection of Claimant’s visit, Claimant ultimately admitted she did not stop at the facility. Her explanation that she did not stop because she saw the vendor was busy does not change the evidence that she told the Assistant Port Manager that she had stopped. We therefore find that there is substantial evidence to establish that Claimant gave false and/or misleading statements to the manager in that regard.

With respect to the Organization’s assertion that Claimant was not proven guilty of charges 2-5, we might find such arguments more persuasive if the record did not establish that Claimant failed to follow the directive that the Proctor site visit was not allowed. We do not doubt that employees in Claimant’s position sometimes take Company vehicles to various locations without seeking permission first, or that they

have leeway to prioritize their tasks. Nevertheless, we concur with the Carrier that when the employee takes a vehicle for a purpose which was specifically disallowed, it does not constitute acceptable or authorized use of the vehicle. The fact that some other permissible duties may have been performed, such as having keys cut, does not eliminate the unauthorized use of performing a site visit, nor does it transform the entire trip into authorized use. We think the same can be said of the charges of leaving work without authority, when it was established that she was not permitted to go to Proctor for the personal business she admitted conducting.

Having found that the rule violations were established, we turn to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. Claimant's curiosity about the jobs that might be available to her after the job abolishment is understandable, but we do not believe curiosity is a legitimate reason to disregard the Carrier's directives. It has been held in many prior awards that acts of insubordination may result in dismissal.

It is also noteworthy that Claimant's alleged misunderstanding of the Carrier's directives was followed by the false statements she made to the Assistant Port Manager regarding her alleged visit to the vendor, which appear to have been made in part to provide additional justification for the trip apart from her interactions with the two Proctor employees. It has been held in many prior awards that dishonesty breaks the bonds of trust necessary in the employment relationship, and that it is grounds for dismissal, even for a first-time offense. On this record, we cannot find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

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 29th day of August 2024.