

FD-1373 3

PUBLIC LAW BOARD NO. 56  
AWARD NO. 20  
CASE NO. 20

BURLINGTON NORTHERN RAILROAD

PARTIES  
TO DISPUTE:

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. R. E. McGowan was unjustly dismissed from service on February 28, 1995, for his alleged responsibility in connection with his completing timerolls and including on those timerolls entries for overtime not worked.
- (2) As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record.

FINDINGS:

Upon the whole record, after hearing, this Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, an employee with 17 years service, was dismissed on February 28, 1995 for dishonesty in submitting overtime claims for

himself and his crew for time not worked and for personal use of a Company vehicle.

The March 23, 1995 investigation reveals that Roadmaster Harvey Feldman obtained information that Claimant had been seen over the weekend of February 19, 1995 driving his Company truck with a family member in Mt. Vernon, some 80 miles from his home, and that there was some question about his leaving work early on February 16. During a conversation on February 21, 1995 where these matters were discussed, Claimant admitted taking his truck and staying with a friend in Mt. Vernon, and driving to get it washed on Sunday with his girlfriend's son. He claimed that he released his crew early on February 16 on make-up time, and that he intended to submit a full ten hours for that day on his timeroll. When questioned as to why he faxed his timeroll for the first half of February on February 13 and put in for one-half hour of overtime on February 14, Claimant responded that the overtime probably represented his working through lunch on another day.

As a result of this conversation, Roadmaster Feldman checked the timerolls and time and track records for the first half of February, and then back as far as the prior September, and discovered what appeared to be other discrepancies. He testified that there was a pattern of Claimant tying up early on Thursdays and putting in for overtime when there was no evidence that his crew had worked through lunch. Feldman explained that Carrier permits make-up time to be used to tie-up early with supervisory authorization, which Claimant did not have, but noted that under such circumstances, overtime cannot be claimed for the same time period.

Feldman testified that Carrier treats falsification of a timeroll as

theft. His records reveal that during the first half of February, Claimant submitted the following additional amounts on his timeroll: 1 hour overtime (OT) and 4 hours travel on February 1; 1/2 hour OT on February 2; 1 hour OT on February 6; 1/2 hour OT on February 8; 1 hour OT on February 13; and 1/2 hour anticipated OT on February 14. Feldman explained that he knew that Claimant's February 2nd entry was false since on that date, Claimant and his crew attended a safety meeting given by Feldman after furnishing lunch, and was released with other crews at 2:45 p.m., hours earlier than his 5:30 p.m. quitting time. Further, Feldman was suspect of Claimant's anticipation of overtime for February 14, and stated that when a timeroll is submitted early, scheduled hours are to be included but not overtime, which is to be submitted with the next timeroll.

Claimant testified that the overtime he turned in for February was for other days his crew had worked through lunch or late. When questioned about specifics, Claimant had no record of specific instances of overtime worked, but recalled an hour each on January 16 and 17, and 3 hours on January 18. He stated that he was never instructed on the proper way to fill out the timerolls since taking over as Foreman 6 months prior, and he did not know why he chose to claim overtime in one hour blocks on different days rather than submitting and noting it on the timeroll during which it was worked. While Claimant indicated that a majority of the overtime was for working through lunch, the time and track records reveal no instances other than perhaps February 1 where his crew would have had to work on the main line during the designated lunch hour. Further, there is no evidence that Claimant ever informed his supervisors that the overtime being submitted in February was for time worked in January.

Claimant also testified that he was unaware that he was not permitted to have a personal family member in his Company truck over

the weekend. Claimant did admit that he understood he was not to use a Company vehicle for personal use, but stated that he and his fiancée's son were taking the truck to be washed on February 19, and stopped for lunch on the way. He stated that it was an errand for the Company's benefit, not his own. Claimant noted that he was required to know Carrier's rules, and testified that he understood Rules 1.2.7, 1.6, 1.15, 20.1, 20.3.1 and 1.19.1 for which he was charged, and felt he complied with them.

The Carrier argues that Claimant violated the cited rules by falsifying his timerolls when showing overtime worked on February 2 and 14 when that overtime was not in fact worked, by failing to give a factual report to his supervisors, and by misusing Company vehicles. It contends that dismissal is an appropriate penalty for this type of dishonesty, especially considering Claimant's prior record.

The Organization argues that Claimant did not violate any rules, since he only left early when he had make-up time, which is a long time practice, and showed that he was submitting overtime for time actually worked in the past. The Organization contends that Claimant should not be faulted with any irregularities in the method by which the timerolls were submitted since he did not receive training on how to fill them out when he became a Foreman.

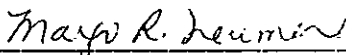
After full consideration of all of the facts, this Board is of the opinion that there is substantial evidence in the record to support Carrier's conclusion that Claimant was properly dismissed on February 28, 1995 for violating the cited rules. The record clearly reveals that, at best, Claimant was submitting belated claims for overtime pay for himself and his crew without keeping any records showing that they had, in fact, worked the additional hours on some previous date. At worse, Claimant was falsifying

his timerolls by adding overtime claims for time not worked. In either case, Claimant was responsible as Foreman for properly submitting accurate time records, which he did not do. The conclusion that he actually falsified his timerolls is buttressed by the evidence of what occurred on February 2, 1995 and Claimant's submission of "anticipated" overtime for February 14.

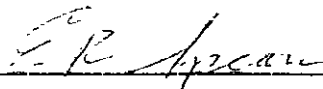
The evidence also establishes that Claimant was in the habit of taking off early on Thursdays on "make-up" time. We take cognizance of Award No. 19 of this Board, in which we determined that he had done so without authorization on February 16, 1995. It appears inconsistent to us that a Foreman would claim continual make-up time without any back-up records to substantiate leaving early, while at the same time submitting ongoing claims for overtime for the alleged additional hours being worked. Under these circumstances, we are convinced that Carrier has submitted substantial proof of Claimant's dishonesty warranting his dismissal.

AWARD:

The claim is denied.

  
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Margo R. Newman  
Neutral Chairperson

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Thomas M. Rohling  
Carrier Member

  
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E. R. Spears  
Employee Member

Fort Worth, Texas  
February , 1997