

PUBLIC LAW BOARD NO. 7585

Case No. 3/Award No. 3
Carrier File No.: 10-11-0676
Organization File No.: C-11-D040-38
Claimant: J. Yancy

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

FACTS:

On June 8, 2011, Foreman Jacob I. Yancy entered the time for himself and his crew at 1810 Central Standard Time. The time he entered included overtime from 0630 to 0730, from 1600 to 1800 and from 1800 to 1830. According to both Claimant and his supervisor, Denver Roadmaster Alton D. Fry, time is usually expected to be put in at the end of the day, but the 20 minutes after 1710 were needed to get his truck ready for the next day and to put his PPE away.

Under Rule 29F of the Labor Agreement: "Employees required to render more than three (3) hours overtime service continuous with their regular assignment shall be accorded an additional meal period, the meal to be provided by the Carrier. Subsequent meal periods, with meals provided by the carrier, shall be allowed at intervals of not more than six (6) hours computed from the end of the last meal period." The Carrier found Claimant in breach of the MOWOR 1.6 prohibition against dishonesty and imposed a Level S 30-day record suspension with a three year review period.

CARRIER POSITION:

Claimant has admitted that he entered time not worked and did not work enough hours to qualify for an "11th hour meal" under Rule 29F. Assistant Roadmaster Jeremy Holton testified he saw Claimant's section truck roll into the bay around 1745, though Claimant still had to take down protection. Claimant cannot account for the time claimed. He was not entitled to any additional overtime for a meal, but entered the time anyway. Further, he did not make an attempt to correct his time and was combative when served with an investigation notice. The facts support the discipline levied against him.

ORGANIZATION POSITION:

There was no fair or impartial hearing because the Conducting Officer met with witnesses and discussed exhibits prior to the hearing. Claimant entered time for an 11th hour meal because he thought that he qualified for it since he had worked through lunch. Having worked 11 hours on the job, his understanding was that the time for the meal was a proper entry. Since he did not know he had done anything wrong, he had no reason to correct anything until receiving notice. At that point he revised the entry to delete an hour of overtime.

Roadmaster Fry testified that he would never have deemed the matter worthy of investigation had he known of Claimant's misunderstanding about the 11th hour meal. In his view, all that was warranted was a reprimand and counseling. Fry said he did not believe Claimant was dishonest. As a result, the allegation of dishonesty cannot stand.

DECISION:

Meeting with carrier witnesses to review their testimony and exhibits prior to hearing does not defeat the fairness or impartiality of the hearing. The Carrier would be hard pressed to provide an effective investigation without any background information. Moreover, the Organization had a full and fair opportunity to get its case on the record.

The Claimant's own supervisor does not see him as being guilty of the alleged offense of dishonesty. No reason can be found in the evidence for discounting Claimant's explanation for the mistake. His reaction to the investigation notice is a separate incident not relevant to the allegation of dishonesty.

AWARD:

The claim is sustained. The discipline shall be removed from Claimant's record.

ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

March 19, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member



D. J. Merrell, Carrier Member