

Award No. 1

Case No. 1

NMB Case No. PLB-07602-000001

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY	)
EMPLOYES DIVISION—IBT	)
	)
v.	)
	)
BNSF RAILWAY COMPANY	)

Carrier File No. 10-12-0202

Organization File No. C-12-D040-7

Claimant — Jay J. Steggall

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

The discipline [Level S thirty (30) day record suspension and a three (3) year review period] imposed upon Mr. Jay J. Steggall by letter dated January 11, 2012, for alleged violation of MOWOR 1.15 Duty, Reporting or Absence and MOWOR 1.6 Conduct in connection with charges of leaving his assignment without his Supervisor's permission and for a time roll entry, which was submitted by Claimant for time not worked at approximately 1440 hours on Friday, November 18, 2011, near the Alliance Division Building, Alliance, Nebraska while assigned as a Grapple Truck Driver on TTDX0516, headquartered in Hyannis, Nebraska.

As a consequence of the violation referred to in Part (1)above, Claimant Jay J. Steggall shall now receive the remedy prescribed by the parties in Rule 40(G).

BACKGROUND:

The Claimant is a grapple truck driver for the Carrier. On November 18, 2011, the Claimant was scheduled to work two hours overtime in advance of the start of his shift and eight hours for his regularly scheduled shift. His normal hours were 7:30 a.m. to 4:00 p.m. He worked the overtime as scheduled and started his normal workday. Consistent with his prior practice, he filled out his time card in advance of his shift, indicating 2 hours overtime and 8 hours at straight time. At some point during the work day, the Claimant learned that he had been scheduled to work all weekend on a surfacing gang in Peetz, Colorado. Claimant normally reported to Roadmaster Scott Taylor on the Sand Hills Subdivision, headquartered in Alliance, Nebraska. However, on November 18, Mr. Steggall had been detailed to haul planks to Peetz, Colorado, which is in a different territory, then supervised by Acting Roadmaster David Horner. After hauling in Peetz in the morning, at some point the Claimant hauled a load of scrap to Alliance to drop off.

Sometime between 1:00 and 2:00 p.m. on November 18, 2011, Roadmaster Taylor returned to the workplace in Alliance, where he saw the grapple truck parked and the Claimant's personal vehicle gone. Taylor, who has to approve time records for all employees under his supervision even when they are detailed elsewhere, pulled up Claimant's payroll record and saw that he had put in for 2 hours overtime¹ and 8 hours straight time. Taylor contacted Supervisor Sharon Campbell. At about 2:30 p.m., Taylor texted Claimant, who texted right back: "... Got into town early and taking care of some stuff. What do you need me to do? I have to work all weekend on surface gang down at peetz [sic]." Taylor and Campbell drove to Claimant's house to see if his vehicle was there; it was not, but en route back to the office, at about 2:52 p.m., they saw Claimant's truck, with him in it, parked at the school his children attend. Later that same day, Claimant revised his payroll record to 2 hours overtime, 5 hours straight time and 3 hours of "approved absence." At the investigative hearing, Claimant stated that he left work because "I needed to take care of some personal stuff and, like I said, I also was doing some railroad stuff" in anticipation of working all weekend out of town. He acknowledged that he did not get permission for his absence before leaving work.

¹ Claimant's right to the overtime is not in dispute.

FINDINGS AND OPINION:

The Public Law Board, upon the whole record and all the evidence, finds that the carrier 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 Public Law Board has jurisdiction over the dispute involved herein.

MOW Operating Rule 1.15, "Duty—Reporting or Absence," states:

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment ... without proper authority....

The record before the Board clearly establishes that the Claimant left work early without authority on November 18, 2011; he admitted as much himself at the investigatory hearing.² The record also establishes that his normal supervisor, Scott Taylor, had spoken to him earlier in the year about his timekeeping and the proper procedures for reporting off. Thus, the Claimant had specific knowledge what he needed to do if he wanted to leave work early. Despite that, he left work early on November 18, 2011, without authorization. Even when he amended his payroll record to reflect the fact that he left work early, he put in 3 hours of "approved absence" when he had not in fact obtained any approval. The record establishes that the Claimant violated MOWOR Rule 1.15, and the Carrier had just cause for discipline.

The Organization contends that the penalty in this case, a thirty-day record suspension followed by a three-year review period, was too severe. The standard for the Board's review in disciplinary cases is whether the Carrier's action was arbitrary, capricious, excessive or otherwise unreasonable. With or without consideration of the Claimant's prior personnel record,³ claiming pay for time not worked is a serious offense. This is especially true where employees work out in the field and management

² The Organization objected to the fact that Claimant's supervisor on November 18, David Horner, did not attend the investigation to testify. (The Carrier submitted a statement from Horner that he had not spoken to Claimant about leaving work early or given him permission to do so.) In light of Claimant's admission that he left work early without permission, whether Horner attended the investigation is a moot issue.

³ The Organization objected that the Carrier claimed to have based its decision at least in part on Claimant's personnel record, when that record was not submitted into the record of the investigation. Because of the nature of Claimant's misconduct, it is not necessary for the Board to address that argument here.

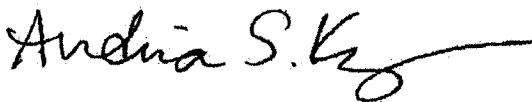
has to rely on their honesty and integrity in reporting time worked. For every incident where an employee is found to have misreported his time, there are likely to be many more instances, involving many more employees, where false time reports went undetected. For that reason, time fraud when it is discovered is subject to serious discipline, up to and including termination. Accordingly, the Board finds that the penalty assessed by the Carrier in this case was not arbitrary, capricious, excessive or otherwise unreasonable.

AWARD

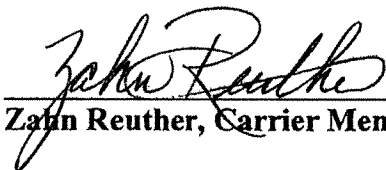
Claim denied.

ORDER

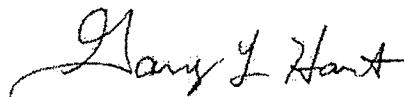
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Andria S. Knapp, Neutral Member



Zach Reuther, Carrier Member



Gary Hart, Organization Member

April 29, 2013

Date