

PUBLIC LAW BOARD NO. 5850

Case No. /Award No. 561

Carrier File No.: 14-21-0167

Organization File No.: 2409-SL13C5-2104

Claimant: R. Rodgers

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

STATEMENT OF CLAIM:

“We Present the following claim on behalf of Richard Rodgers (0155184), Seniority Date 07-20-2006 for the removal of the Claimant's Standard Formal Reprimand and 1 Year Review Period. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s).”

CARRIER POSITION:

During the week of February 11, 2021, while reviewing Claimant’s time, Roadmaster Brittenum noticed Claimant had recorded too much overtime and asked him to adjust the entry. He subsequently discovered that Claimant had not made the changes and again requested he make the corrections. After giving Claimant more time to make the changes without result, the Carrier initiated an investigation process. Signal Supervisor Josh LeMar determined that Claimant had falsified his payroll between January 16, 2021 and February 4, 2021, in violation of MWOR 1.6. Claimant was assessed a Standard Formal Reprimand with a one-year review period.

The Carrier maintains it was evident that Claimant was indifferent to his obligation to correct his time and therefore was dishonest in his intentions. Brittenum explained: “If you look through the times, they're they're a hour, hour and a half in some, and they were never more than 25 miles from either direction at any hotel

point through those dates. And since they had a Company vehicle they they get paid from the hotel just to the job site.” TR 12. He further explained that the gang workers are entitled to 40 miles per hour. Brittenum said the records were never corrected, though Claimant did work on it at times.

ORGANIZATION POSITION:

As the Organization sees it, Claimant honestly believed he was entitled to the overtime pay for traveling from the hotel to the job site. It notes he was never given any training or instruction on how to input payroll and claimed he had made multiple calls to EAM system seeking instruction. It takes issue with any finding of dishonesty:

NICHOLAS HAISTON: So he never told you no but so he was never dishonest to you personally. Is that correct?

JADRIEN BRITTENUM: No. He just never changed the time. * * *

Claimant’s explanation also fails to demonstrate dishonesty:

And so, I thought I had more time to go ahead and do this and then, you know, he texted me again on the 11th or on the uh 10th and asked me if I was able to go back and do it. And and I I’ll be honest with you, up up to that point I had not had time to even open my laptop and look at time. And then I realized that it was an entire pay half and, you know, I was like, okay, that’s overwhelming. And then that night, that very night, I got the Notice of Investigation. TR 34

DECISION:

These facts show that Claimant recorded more overtime than was due. If he was not sure of how to record travel time, he could have asked any member of supervision. After his supervisor advised him to change the entry, Claimant failed to make the needed changes in a timely fashion. There is no indication of any other problem with Claimant’s timekeeping.

Inherent in the concept of dishonesty is the element of intent. One cannot be dishonest without knowingly trying to plant an untruth. In order to establish an offense as grave as dishonesty, the evidence must lead to a reasonable conclusion that Claimant intended to fraudulently misrepresent time worked in order to

benefit himself by obtaining compensation which had not been earned. The Carrier asserts this burden has been met due to Claimant's failure to timely make the needed changes. Claimant's testimony about the long hours he was working at the time was not rebutted. "I wasn't able to get but, you know, six-seven hours of rest because of broken rails and stuff like that." TR 33 The entries he was being asked to change were not just for himself, but for the entire eight-person gang.

The evidence here shows that Claimant entered the wrong overtime and failed to timely correct it after instructions from his supervisor. He was working long hours at the time, meaning his availability to do this task was limited. Claimant's failure to correct the timekeeping records can be explained by this time pressure. There is no equivalent evidentiary reason to think he was trying to defraud the Carrier.

The offense here concerned might be better characterized as failure to follow instructions, however Claimant has not been charged with such an offense and, as a result, cannot be penalized for it. It cannot be assumed that Claimant wanted to steal from the Carrier simply because he was slow to follow instructions. The evidence is therefore inadequate to establish the grave offense of dishonesty.

AWARD:

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for any time lost as a result of this incident, including any pay lost for the Investigation.

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.

Dated: May 4, 2023



Patricia T. Bittel, Neutral Member



Jeffery L Fry, Labor Member



Logan McKenna, Carrier Member