

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 355, (Case No. 355)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Michelle McBride, Carrier Member
Louis R. Below, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing July 22, 2020, when Claimant Robert M. Barnes (0297622) was dismissed from service for theft of time and dishonesty in regards to work performed on March 12, 2020, in violation of MWOR 1.6 Conduct.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing July 22, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0261) (Organization File No. 2401-BN40D3-203)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate Claimant was assigned as a Group 2 Machine Operator on Position 54024, on Gang TMOX5449 headquartered in Joliet, IL. On March 11, 2020, Claimant was instructed to attend the town hall meeting on March 12, 2020 in Darian, IL. On the following morning of March 13th, Claimant was asked how the meeting went and replied that he attended

and it was uneventful. Later it was alleged that Claimant may not have attended the meeting or reported for duty at any other location, but still paid himself for the day and because of that Claimant was directed to attend a formal Investigation on March 26, 2020, which was mutually postponed multiple times until June 26, 2020, concerning in pertinent part the following:

“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged falsification of payroll and dishonesty in regards to work performed on March 12, 2020 while in position TMOX 5449. The date BNSF received first knowledge of this alleged violation is March 13, 2020.”

On July 22, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

It is the Organization's position that Claimant attended the town hall meeting on March 12, 2020, he was instructed to attend which was verified by a co-worker. It asserted that Claimant testified that he was having trouble with the new payroll system and March 13th was the first time he attempted to request monies without assistance. It argued he erred because he believed that if you attended the meeting you put in for eight hours because the normal meeting was a morning meeting with lunch after which the attendees were excused for the day. It further argued that Claimant admitted he arrived late and left early without permission from his Supervisor because Claimant received a call that his child had a high temperature and Claimant was fearful of Covid. Lastly, it argued that Claimant was incorrectly told by Supervisor Glidden that Claimant's payroll entry for March 12th could not be corrected which was why the Claimant did not correct the entry. The Organization concluded that the Carrier did not meet its burden of proof and it requested that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that Claimant was instructed to attend the town hall meeting on March 12, 2020, in Darian, IL. It asserted when asked how the meeting went, Claimant lied and said he attended and it was uneventful. However, when Claimant was questioned further about details of the meeting such as who he sat by, what they served for lunch, or even the address of the meeting, Claimant was unable to provide answers for any of those questions.

Furthermore, Claimant entered time for March 12, 2020, showing that he was working on Leg B at the Logistics Park Chicago (LPC) installing on-track material, but did not show up or work at LPC that day and needed printed directions for how to locate LPC on March 13th.

It argued that despite all of the aforementioned information, Claimant insisted he attended the town hall meeting, however, when Claimant asked his fellow coworkers to write a statement saying they did in fact see him at the meeting, all of them declined and declined to attend the Investigation on his behalf. Lastly, it asserted that Claimant admitted that he did not perform the work for which he inputted time. Carrier argued that after proving Claimant was guilty as charged it appropriately dismissed Claimant as dishonesty is a Stand-Alone Dismissible Violation. It asked that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and it is determined that the Investigation and appeal process met the guidelines of Rule 40 of the former BN Agreement.

Review of the record reveals Claimant stated he arrived late for the town hall meeting on March 12, 2020, and left early because he received a call about his daughter having a high fever. When Roadmaster Glidden interviewed the other crew members of Claimant's Gang one employee stated Claimant attended the meeting whereas the other three members did not recall seeing him there. Roadmaster Handzus who conducted the town hall meeting on March 12th recalled seeing all of Claimant's crew members in attendance because they arrived late and he was at the podium when they entered with a clear line of sight as everyone else was seated. He explained that there were two doors on one side of the large room from a hallway and one exit door from the outside on the other side of the room. Mr. Handzus testified he did not see the Claimant enter late, but it was possible that Claimant arrived during one of the breaks.

Claimant stated he drove to the meeting alone and arrived late, therefore, it is possible that he might have arrived during one of the breaks. It is unusual that one of his coworkers told Roadmaster Glidden he saw Claimant at the meeting, but would not offer a written statement. The Carrier inferred that the witness's reluctance to appear at Claimant's Investigation in behalf of the Claimant should be viewed negatively. That argument is not persuasive as there could be a variety of reasons for an Organization witness not to appear at a Hearing such as he might not be allowed by employer to attend or he might not be guaranteed that he would be compensated for his attendance. Nonetheless, that oral statement by Claimant's coworker given to a Supervisor must be given consideration as no reason has been offered why that employee would not be forthright or that employee had anything to gain by not being truthful.

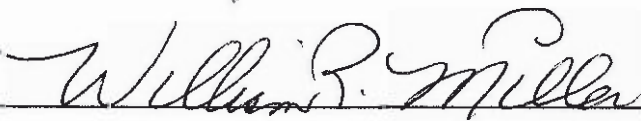
The Board is not persuaded that Claimant did not attend the town hall meeting. However, there are several questionable aspects to the Claimant's story about attending the town hall meeting. When Claimant was first questioned about attendance at the meeting Claimant never mentioned arriving late and leaving early, but instead told his Supervisor the meeting was

uneventful and he couldn't recall what he had for lunch one day earlier or who he sat near. Claimant's initial silence on time spent at the meeting is telling. Claimant did not change his story about attending the full meeting until after he was challenged by his Supervisor about his attendance at which time Claimant said he arrived late and left early without permission. Assuming for the sake of argument, that Claimant showed up for the town hall meeting for a limited time Claimant's subsequent request on March 13th for eight hours compensation for March 12th for working on Leg B at the Logistics Park Chicago (LPC) installing on-track material was a clear misrepresentation of what he told his Supervisor about his activities on March 12, 2020. On Pages 24 – 26 of the Transcript, Claimant was questioned about his work time entry for March 12th, Claimant testified that he put in for eight hours pay on the basis that he applied fasteners to track rails. Claimant's excuse for doing it in this manner was because it was the fastest way to get paid and the computer system was too convoluted and complicated. However, in almost the same breath he testified **"I have asked for help everyday imputing my time."** If Claimant had no intention to misrepresent his activities for March 12th he could have waited for assistance before inputting his time-roll request as Claimant stated he normally asked for it every other day. Claimant testified he arrived at work early on March 13th and put in his payroll request for the prior day before being questioned about the March 12, 2020, town hall meeting by his Superior. It is clear that even if Claimant attended the March 12th meeting for a short time Claimant misrepresented his activities with his payroll entry for that date and then got caught after already inputting the misrepresentation. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof and Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the offense Claimant had approximately six years of service. Attempted theft and dishonesty are Stand-Alone Dismissible offenses. In accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) the discipline was appropriate and will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

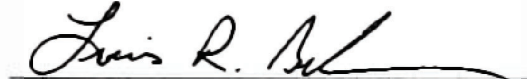
Claim denied.

A handwritten signature in blue ink, reading "William R. Miller", is written over a horizontal line.

William R. Miller, Chairman & Neutral Member

A handwritten signature in blue ink, reading "Michelle D. McBride", is written over a horizontal line.

Michelle McBride, Carrier Member

A handwritten signature in blue ink, reading "Louis R. Below", is written over a horizontal line.

Louis R. Below, Employee Member

AwardDate: March 25, 2022