

Case No. 394
Award No. 394
BNSF File No. 14-22-0076
BMWED File No. 2414-SL13C5-2206

Public Law Board No. 7048

PARTIES) **Brotherhood of Maintenance of Way Employees Division**
) **ATSFF System Federation**
TO)
) **and**
DISPUTE:)
)
) **BNSF Railway Company**

Board Members

Jeanne M. Vonhof, Chairman and Neutral Member
Michelle McBride, Carrier Member
Jeffery Fry, Employee Member

Statement of Claim

“This letter is our appeal to you concerning the Dismissal for the Claimant, Nick Rotolo (0344705), dated March 21st, 2022, by Allan Breden, Project Engineer and Conducting Officer. The company states that Mr. Rotolo was in violation of MWOR1.6 Conduct. An investigation was held on March 1st, 2022, to gather the facts surrounding this incident. The assessment of this discipline of dismissal is harsh, excessive, arbitrary, capricious, and unwarranted. The Organization is seeking to rescind the discipline of Dismissal, as assessed by the Carrier's letter dated March 21st, 2022.”

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; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance with the Agreement that established the Board. The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules, or working conditions, nor have authority to change existing agreements or to establish new rules.

The Board shall have jurisdiction over the disputes assigned to this Board and such other disputes as may be added during the life of the Board by mutual assent of the parties.

The Claimant, Nick Rotolo, has worked for the Carrier for seven years. On March 1, 2022 the Carrier conducted an investigation into allegations that the Claimant had acted dishonestly when paying himself on January 17, January 23, January 27, and January 30, 2022, while assigned as a Truck Driver on Headquartered gang TSEC0326. As a result of the investigation the Carrier concluded that the Claimant was in violation of MWOR 1.6 Conduct and sent him a notice of dismissal dated March 21, 2022. The Organization subsequently filed this claim.

The Carrier argues that the Claimant logged onto the pay system and changed pay codes to pay himself even though he did not work on these dates, as indicated by a statement provided by his Acting Assistant Roadmaster. The Claimant testified at the investigation that he did work on January 17. Although he had originally arranged to be absent that day, he said that his medical appointment was changed and he came to work at 7:00 AM, but his crew was working at another location that day. He did not reach out to his crew and did not see the Foreman, Roadmaster or Assistant Roadmaster that day, because he did not think it was worth it for him to join the crew and travel to their worksite when he was leaving early, after four hours. He said he simply assisted a Mechanic, and this Mechanic was laid off before the investigation. The Claimant said he discussed the 17th with his Foreman on the 19th, and when the Foreman logged off the computer, the Claimant logged on, for convenience, and changed the pay code from absent to working 8 hours for that day.

The Claimant also changed pay codes and paid himself eight hours of overtime on two rest days, January 23 and 30, because he said that he should have been called in for the overtime shifts on those days. According to the Claimant, overtime is position-based, and not awarded strictly by seniority, and as the senior Truck Driver on the crew, he should have been called for overtime in that position. He testified that he has learned through this incident that he should not go in and change the pay codes himself when there is such a dispute over overtime, but rather should make a claim through the Union for the overtime hours. He testified that in the past he has received a “cut letter,” deducting pay from his wages to handle pay discrepancies. He testified that he put the changes in rather than his Foreman because he believed that the Foreman did not want to put his name to these changes, even though the Foreman supported him being paid.

As for the January 27 date, the Claimant testified that the crew had a safety meeting that day for which employees were paid eight hours. However, he said he later added another four hours on this date because there was another overtime opportunity that he should have been offered that day but was not offered. Later, he said that he remembered that they had offered him the overtime and he had refused it, so he discussed this with his Foreman. The record shows that the Foreman deducted the overtime hours, and the Claimant was paid for only eight hours.

The Organization suggests that the investigation was untimely because the Claimant's Foreman knew by January 28 that the Claimant had changed the time for the January 27 date, and therefore, January 28 should be considered the date of the first knowledge by the Carrier. However, the Claimant did not go into the system and change the records to credit himself for the additional four hours until February 1. On that same date the Foreman went back in and deducted the hours recorded by the Claimant, and therefore, this was the first date to which knowledge of the event can be attributed to the Carrier. Therefore, the evidence does not substantiate that the investigation was untimely.

The Claimant claimed pay for hours worked on January 17, 2022, after first asking for and being granted the day off. He said that his medical appointment was changed and he decided to come into work, without notifying his supervisor the night before. He also did not attempt to contact his Foreman or Assistant Roadmaster when he said he came into work and did not find his crew, and also did not obtain authorization to work with a Mechanic instead of with his crew. There is no evidence from any other employee that they worked with the Claimant that day, including the Mechanic. Furthermore, although the Claimant said that the system automatically put in eight (8) hours of work for him, he made no effort to correct it and deduct the four (4) hours that he did not work that day.

The Claimant also claimed pay for two rest days that he did not come to work, but that he claims he should have been called in for overtime. An employee should not reasonably believe that he can change pay records and pay himself for hours that he did not work, on the basis of his understanding of the seniority agreements regarding overtime call-ins, without any claim by the Union for this overtime on his behalf, or acknowledgment by Management that he should have been called and offered overtime before another employee.


The Organization argues, however, that this matter should have been handled under Rule 45 and the Claimant simply issued a "cut letter," as he had in the past, to correct pay discrepancies. Rule 45 is directed at correcting pay discrepancies expeditiously. However, the pay discrepancies at issue here are not simple clear-cut mistakes agreed to by the parties. In this case the Claimant altered pay records on his own to claim pay for hours that he did not work. There are issues about the legitimacy of the pay claims made by the Claimant and his authority to claim them on his own, and therefore, the evidence does not establish that Rule 45 applies.

The Organization argues that sometimes employees are paid for hours they have not worked. These claims usually result from a determination that a collective agreement has been violated and the Carrier has improperly failed to provide an opportunity to work to an employee. However, these payments are usually agreed to by the parties in a settlement or adjudicated in the claims process. An individual employee may not simply adjust the payroll records to pay himself for hours not worked that he thinks he should have been offered to him under a collective agreement, without any participation of the Carrier or the Union.

The evidence therefore establishes that the Claimant paid himself for hours he knew he did not work on January 17. In addition, he paid himself for two full days later in the month that he did not work, without any overtime claim filed by the Union or authorization for overtime payment from the Carrier. The evidence regarding whether his Foreman corrected the overpayment of January 27 only because the Claimant brought it to his attention is less clear, but even setting aside this date, there remains substantial evidence that the Claimant acted dishonestly and intended to “game the system” by his actions in January, 2022. When employees have access to change the data on which their pay is based, the Carrier must be able to trust that they will be honest, and take any disputes over pay for hours not worked to the Union or Management. Under these circumstances, the Board concludes that the Claimant violated Rule 1.6, Dishonesty, and that the penalty of dismissal is not excessive or arbitrary.

AWARD

Claim denied.

Signature 

Jeanne M. Vonhof
Neutral Member and Chairperson



Michelle D. McBride
Carrier Member



Jeffery Fry
Employee Member

Date of Award: August 28, 2024