

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 107
Carrier File No.: 10-21-0142
Organization File No.: C-21-D070-12
Claimant: R. Savala

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

STATEMENT OF CLAIM:

The Organization claims that BNSF Railway Company (BNSF) wrongfully dismissed Claimant for violation of Maintenance of Way Operating Rule (MWOR) 1.6 – Conduct for his dishonesty and theft when he falsely claimed compensation for time he did not work on December 30, 2020 and used a Company vehicle for personal business without permission. As a result, the Organization requests Claimant be reinstated to service and made whole for all financial losses incurred.

CARRIER POSITION:

On Thursday, December 31, 2020, Roadmaster Ramirez was contacted by an employee on Claimant's gang inquiring into the location of the Gang's Company truck. The employee had been bumped and needed to get his personal work equipment out of the truck. Roadmaster Ramirez texted Claimant asking for the location of the truck. Claimant then called Roadmaster Ramirez. When asked at 1018 Mountain Time (MT) / 1118 CT, the Claimant said the Company truck was in the parking lot of the hotel in Fort Morgan, Colorado. The following Monday, January 4, 2021, Roadmaster Ramirez investigated the location of the truck by checking database records and found: • Tuesday, December 29, 2020 – Left Fort Morgan at 1842 MT • Tuesday, December 29, 2020 – Arrived Scottsbluff at 2040 MT • Thursday, December 31, 2020 – Left Scottsbluff at 1021 MT. This data clearly shows that the Company truck could not have been in the Fort Morgan hotel parking lot when the Claimant talked to Roadmaster Ramirez at 1018 MT on December 31, 2020 because it did not leave Scottsbluff until 1021 MT that morning. Roadmaster

Ramirez also checked Claimant's pay records for this period and noticed that Claimant had submitted for eight hours worked on December 30th.

When Roadmaster Ramirez challenged the Claimant regarding the location of the Company vehicle, as well as for the time submitted as worked on December 30th, Claimant first stated the vehicle was in Fort Morgan on December 31st, and that he had worked eight hours on December 30th. However, when Roadmaster Ramirez pointed out that he had documentation proving the vehicle was in Scottsbluff on December 31st, Claimant eventually confessed that he drove the Company vehicle to Scottsbluff after work on December 29th and had not returned to Fort Morgan until December 31st.

The Carrier determined that Claimant had been dishonest, about both the Company vehicle and his reported time worked.

Claimant did not obtain permission to use a Company vehicle for personal business. He made no effort to notify any Company Officer that he had taken the Company vehicle, or to obtain permission to do so, other than one attempt to reach Roadmaster Ramirez, who was on vacation, on December 29th.

When he was called by Roadmaster Ramirez on December 31st about the whereabouts of the Company vehicle, he omitted any mention of the fact that he had driven the vehicle to Scottsbluff and was actually just leaving that location to return to Fort Morgan. Instead, he chose to dishonestly state that the vehicle was in the hotel parking lot in Fort Morgan when it clearly was not. He admitted his misrepresentation at the hearing:

JAMES VARNER: He asked you uh in his statement, he asked you where the truck was, and you told him it was

RICHARD SAVALA: I told him it was in Fort Morgan.

JAMES VARNER: And was it truly in Fort Morgan?

RICHARD SAVALA: No, it was not.

When Claimant was initially questioned about his submission of time worked for December 28th through December 30th, he stated that he worked the entire week. It wasn't until after Roadmaster Ramirez pointed out that he could not have worked on December 30th because he was in Scottsbluff, that Claimant confessed he had not worked that day.

On January 4th, he asserted his pay submission was a mistake that he would correct. Then on January 6th, he explained that he had input the time earlier that week so that he could be ahead and up to par with timely reporting expectations. However, during the investigation on January 21, 2021, when Roadmaster Ramirez provided evidence proving Claimant claimed eight hours of straight time pay for December 30th, his excuse changed

again. He now claimed he had inadvertently entered time for himself when he was changing time for another employee on his gang.

ORGANIZATION POSITION:

Claimant eventually admitted that he did not work on December 30th because he was in Scottsbluff. He told Roadmaster Ramirez that his absence for December 30th had been approved by Roadmaster Philips and his claim for compensation was just a “mistake” that he would correct.

Claimant explained that during a time of desperation, he used a company vehicle to travel to see a dear family friend that was in the last stages of her life. Claimant asserted he tried to call Roadmaster Ramirez, but got no answer. Claimant said he was distraught and made a decision. The vehicle that he drove home was assigned to Claimant's gang and was not being used by anyone on the gang as they were all on vacation. His personal vehicle had just been repaired and when leaving town began to experience issues and after conferring with the mechanic, he was advised to not drive the vehicle any further.

Claimant has twenty-four plus years of service with BNSF and has proven to be a valuable and respected employee. The Organization concludes that the Carrier has not remotely given proper consideration to the mitigating circumstances in the case, nor has it provided substantial evidence of a rule violation.

DECISION:

This case places the desperate need to visit a very sick friend in juxtaposition against the Carrier's rules for authorizing vehicle use. Had Claimant been honest in his responses to management, and were his 24-year record not marred with three prior record suspensions, this would be a very different case. The problem here is that Claimant persisted over time in making misrepresentations to management and in changing his story rather than just telling the truth. He made little or no effort to get permission to use the truck, and offered too many different explanations for charging for time not worked. His credibility has been damaged beyond repair, and the Carrier is within its rights to conclude that it cannot again trust this employee.

AWARD:

The claim is denied.


Dated: February 16, 2023



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member