

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 80
Carrier File No.: 10-18-0046
Organization File No.: C-18-D070-2
Claimant: K. Scott

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

STATEMENT OF CLAIM:

The Organization claims that BNSF Railway (BNSF) violated Rule 40 when it wrongfully assessed excessive discipline of dismissal for Claimant's violation of Maintenance of Way Operating Rules 1.6 (Conduct) and 1.15 (Duty — Reporting or Absence) dishonesty by paying himself for time not worked on various dates in September, 2017.

CARRIER POSITION:

In the Carrier's assessment, Claimant was afforded a fair investigation, supported by the fact that the Organization did not object during the hearing to any behavior by the conducting officer.

When a co-worker alleged Claimant Scott had falsified his time, Claimant's supervisor researched Claimant's vehicle movements. He found Claimant had reported overtime for extensive periods during which his truck was at his home or at a mechanic's shop. The Carrier determined that Claimant had paid himself both overtime and straight time for time not worked on at least seven occasions in September:

September 1: Paid himself 1 hour and 43 minutes
(could not account for time time.)

September 6: Paid himself 3 hours and 14 minutes
(claimed had to pick up a coworker and he prepared lists.)

September 7: Paid himself 4 hours and 58 minutes
(said was on phone calls at home after hours.)

September 9: Paid himself 8 hours
(told supervisor his truck's windshield was broken so he used his own vehicle to perform off track inspections; he showed a picture of his truck outside the depot on that day at the beginning of his shift as evidence he worked that day. He later denied telling his roadmaster he did any inspections that day and said he cleaned the yard and performed small tasks for eight hours.)

September 15: Paid himself 4 hours and 43 minutes
(could not account for time time.)

September 20: Paid himself 2 hours and 42 minutes
(could not account for time time.)

September 21: Paid himself 4 hours and 18 minutes
(could not account for time time.)

The Carrier rejects the Organization's attempt to discredit its GPS data as unreliable. It views this as nothing but a distraction from the fact that Claimant had no legitimate evidence that he actually performed the eight hours he claimed on September 9, or any of the other hours listed above.

Farrell testified that Claimant called him stating he had been at work on the ninth, but could not get any track time because it was too busy. Claimant also stated that he performed switch inspections and backtrack inspections that day. Farrell explained that if Claimant had been working off track doing switch inspections, he would have needed track authority to do that, yet he had none. As to Claimant's assertion that he could not get track time on September 9, Farrell testified that he investigated and found it was readily available.

Claimant told Farrell his truck was in for windshield repair on September 9 when that repair was not done until later in the month. As to work done at home, Claimant contended he was making calls on behalf of the Carrier's business when his call log showed no calls from September 8 to 12. Based on these inconsistent statements, the Carrier does not deem Claimant's explanations to be credible.

In the Carrier's view, any argument that Claimant was spending time making reports or entering time must be summarily rejected because Rule 61 of the Agreement specifies that making reports and entering time are ancillary tasks already contemplated in Claimant's rate of pay.

ORGANIZATION POSITION:

The Organization contends that the GPS data entered during the investigation is unreliable; Claimant's supervisor erroneously concluded Claimant's truck was at home on September 9 when it was actually in the shop for repairs. It concludes that the GPS data cannot be used to establish facts in controversy. It maintains the Carrier's allegations are based entirely on GPS readings of when Claimant shut down for the day at his home residence, but fail to take into consideration time Claimant may have worked after the truck stopped.

Roadmaster Farrell testified that Claimant's truck never left his residence on September 9. Based on this, he assumed Claimant had falsified his time. In fact, the truck was undergoing brake repair at a mechanic's shop until September 13. The Organization maintains Farrell was clearly wrong.

Farrell admitted that when he approached Claimant about it, Claimant immediately pulled out a timestamped picture of his personal vehicle parked in front of the depot on September 9. During the investigation, when confronted with a discrepancy regarding the dates of the windshield repair, Claimant said he mixed up the dates of work on his truck's windshield versus the brakes. He denied telling Farrell that he did off track inspections. In the Organization's assessment, these explanations by Claimant are more than sufficient.

The Organization notes Farrell also tried to establish falsification by showing that Claimant had no track authority on September 9 so he could not have been inspecting track. The Organization refutes this allegation by pointing out that Claimant could not inspect track without his Hy Rail vehicle, which was in the shop. He therefore could only perform the alternative duties he described at the time of Investigation.

The Organization argues there is no proof that Claimant was not doing Company business on any of the other days in question. It cites the many duties Claimant was responsible for which could be done either at the depot or in his truck at home: job briefings, conference calls, paperwork, phone calls, lining up the Section gang, welders, contractors etc.

DECISION:

The Organization provided evidence that Claimant's truck was at a mechanic shop on September 9, calling the reliability of the Carrier's GPS data into question. Though the accuracy of the GPS location feature leaves much to be desired, there is no contention that the GPS stayed on after the truck was shut down. Hence, it is a reasonable source of information about when the truck was running and when it was finished for the day. The evidence shows that Claimant repeatedly charged substantial amounts of time after

his truck was finished for the day. He has a variety of explanations for the need to continue working at home, none of which is substantiated.

Claimant described a variety of duties performed while he was at home: making lists of track charts and crossings, making DOT signs at night and being stuck on the phone for hours at a time trying to get EAM to take the time.

Rule 61 provides as follows:

Except as otherwise provided in the rule, on positions the duties and/or responsibilities which require service in excess of the assigned working hours of the general force, the preparation of time returns time returns, material and other reports, etcetera, are part of the duties and responsibilities of such positions, compensation for which is comprehended in the rate established for such positions.

As to the time Claimant claimed for inputting time and preparing reports, we agree with the Carrier that these duties are precluded from overtime compensation under Rule 61. Additionally, we note that there is no evidence anywhere in the record of a discussion between the Carrier and Claimant setting up an expectation that Claimant would be permitted to work from home and claim the time for it. It is not reasonable to assume that one could sit at home and charge the Carrier for working time when this arrangement has never been approved.

During the Investigation, Claimant stated as follows regarding September 9: "I cleaned up the slow order boards. I cleaned up the yard. I went to York and picked up more uh cut stakes um because I needed to cut stake my curbs and paint the stakes." (TR 57-58) He denied telling Farrell that he had worked on switches or track. (TR 68) Claimant told Farrell that he could not get track time on September 9 because it was too busy, when Farrell states track time was quite available that day. Clearly, there is a substantial credibility issue between Claimant and Farrell.

As to Claimant's credibility, there are several considerations. Claimant will be impacted by the outcome of this proceeding and has an interest in seeing it come out his way. By contrast, Farrell has no reason to fabricate facts. Claimant has changed his story several times about what he was doing on September 9, providing new explanations when his old ones fail to pan out. This has undermined his reliability.

The Carrier's burden is to supply substantial evidence. It is not required to provide a preponderance of the evidence. In this case, the evidence is indeed substantial and the Carrier has met its burden.

AWARD:

The claim is denied.

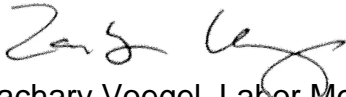
ORDER:

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member