

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 9

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION

v.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-12-0237
Organization File No. 70-13D2-123

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on May 18, 2012 when it dismissed Claimant, Jason E. Boyd, for alleged violation of Maintenance of Way Operating Rule 1.6-Conduct, for dishonesty surrounding time roll entry claiming pay for time not worked.
2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove the discipline from Claimant's record with seniority, vacation and all other rights unimpaired, and make him whole for all time lost account of this incident.

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7590 has jurisdiction over the parties and the dispute involved herein.

In this matter, the Organization claims a procedural error because the Carrier claims it did not know of Claimant's time entry until 29 days after the event and the Notice was not sent until 33 days after the event. Further, on the merits, where Roadmaster did not even know that Claimant came in late to work and instead thought him gone the entire shift. Claimant had told the Roadmaster the prior day that he would be arriving late due to a flooded basement. The discrepancy over 2.5 hours was due to a rote entry on the last day before the job was abolished and not due to an intent to defraud.

The Carrier responds that the Rules require that investigations be held promptly and that the investigation in the instant matter was held within 30 days of first knowledge. Further, the Carrier's Policy for Employee Performance and Accountability establishes a non-exhaustive list

of violations that may result in termination. Theft is one of those violations. Further, Claimant admitted to the violation.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there were no procedural defects which void the discipline. The Carrier sent the Notice shortly after learning of the timekeeping discrepancy. However, the Board finds that there is no substantial evidence in the record of the misconduct.

The evidence is unchallenged that Claimant alerted the Roadmaster that he would be late to work due to water in his basement. Claimant reported at 0930, Claimant worked his shift and entered his time. Claimant admitted that he entered his time improperly. PEPA Appendix B lists Stand Alone Dismissable Violations as:

- 1) Theft or any other fraudulent act, which may be evidenced by the intent to defraud BNSF or by taking BNSF monies or property not due.

Although Claimant admitted to entering time for a full day, this is not the same as admitting to violating Appendix B. The evidence in the instant matter does not indicate an intent to defraud for 2.5 hours of straight time. To the contrary, Claimant alerted the supervisor that he would be arriving late. He arrived late and entered the incorrect time. His testimony was that he made a mistake. This is different from the Roadmaster's testimony that Claimant sought a day's pay despite being a no-show. Claimant did show to work at 0930 and worked the remainder of his shift. Claimant's notification to the Roadmaster indicates a lack of intent to defraud.

On the limited facts presented in the instant matter, the record does not establish a violation of Appendix B because there is no substantial evidence of an intent to defraud or take money not due.

Claim sustained.

Brian Clauss

Brian Clauss, Chairman

Samantha Rogers

Samantha Rogers, Carrier Member

David D. Tanner

David D. Tanner, Organization Member

Signed on December 23, 2013