

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 27

---

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-13-0157  
Organization File. 160-13D2-133

---

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing February 13, 2013, when Claimant, Aaron D. Stallings (6469589), was dismissed for his alleged misuse of a BNSF credit account by providing BNSF vehicle IDs to American Clean, who in turn charged ARI for work performed, and after payment was received by American Clean, you received a portion of the reimbursement to American Clean in the amount of approximately \$9,350.00, while he was working as a Flange Lube Maintainer during the months of March to September 2012. The Carrier alleged violation of Maintenance of Way Operating Rules (MOWOR) 1.25 Credit or Property, MOWOR 1.6 Conduct, 1.3.1 Rules, 1.9 Respect of Railroad Company and 1.18 Unauthorized Employment. BNSF first knowledge was February 13, 2013.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this dismissal and he be reinstated, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing February 13, 2013, continuing forward and/or otherwise made whole.

---

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.

The Organization raises a procedural objection to the charge and also to the admission of a videotape of an interview of an alleged perpetrator of a fraud against the Carrier. On the merits, the Organization argues that there is no evidence of Claimant's involvement in the alleged kickback scheme.

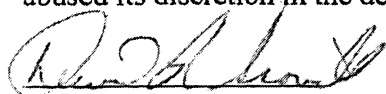
The Carrier responds that notice was sufficient to place Claimant on notice of the incident under investigation and prepare a defense. On the merits, the Carrier counters that there was ample evidence in the record of Claimant's involvement in a kickback scheme involving a third party vendor.

An examination of the record indicates that the notice was sufficient to apprise Claimant of the incident under investigation. The Organization's argument regarding the presentation of the video of Garcia's interview is persuasive. In the video, Garcia discusses a kickback scheme for vehicle washes in which Claimant is allegedly involved. The Organization objected at the hearing – citing a lack of opportunity to cross examine the witness. By not having the witness available, the Claimant was deprived of an opportunity to cross examine on a number of relevant inquiries such as: the witness's motivation to lie; inducements or promises offered the witness; the inducement to commit the scheme; and fabrication by Garcia, among other topics. To adopt the Carrier's position on the videotaped testimony would permit damning "evidence" that cannot be questioned by the accused. The video should not have been admitted and is not considered. Therefore, the charge of unauthorized employment has not been proved. However, this finding does not end the inquiry. The testimony of the Special Agent outlined a billing scheme involving company vehicles over a multistate area. Even with Garcia's testimony excluded, there is some evidence of Claimant's involvement in the scheme.

Claimant also testified that he was trying to help Garcia get Carrier business – to the point where he had sent photos of vehicles to Garcia. This was a violation of the Conduct rule. He also offered different explanations for how he approved third party cleaning services when the vehicle was at the Ford dealer being serviced. The conflicting statements offered by Claimant, combined with the circumstantial evidence, established that he approved billing for the cleaning when it was impossible to clean the vehicle.

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.

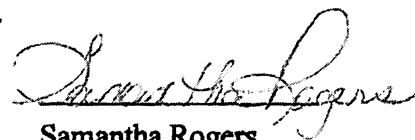
Even with the videotape excluded, there is substantial evidence in the record of Claimant's violation of the remaining cited Rules. There is nothing in the record to establish that the Carrier abused its discretion in the decision to dismiss Claimant. Claim denied.



Dave Scoville  
Organization Member



Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on September 22, 2015