

BEFORE PUBLIC LAW BOARD NO. 7590

CASE NO. 56

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V

BNSF RAILWAY

(Former ATSF Railway)

BNSF FILE NO. 14-16-0257

BMWED FILE NO. 1547-SL13C5-165

Claimant: C. Klutts

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Southeast District 900 Chad Klutts (1670702) Seniority Date November 30, 2006 for reinstatement with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The claimant shall be made whole for all financial losses as a result of the violation, including compensation for: 1.) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service); 2.) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service; 3.) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been removed from service; 4.) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service commencing April 13, 2016, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

Findings:

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. Parties to said dispute were given due notice of hearing thereon.

Claimant was notified to meet his Roadmaster for the Roadmaster to accompany him on track inspections. Upon Claimant arriving over three hours late to the meeting, the Roadmaster began an audit of Claimant's time and inspections. Claimant received a letter dated April 13, 2016:

An investigation has been scheduled at 1000 hours, Friday, April 22, 2016, at the Gainesville Yard Office, 1328 N Dixon, Gainesville, TX, 76240, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged dishonesty in false reporting of pay records and FRA inspections beginning March 1, 2016 and continuing. The date BNSF received first knowledge of this alleged violation is April 12, 2016.

This investigation will determine possible violation of MWOR 1.6 Conduct.

This is to advise CHAD A KLUTTS is being withheld from service pending results of investigation.

An investigation was held following a postponement. Claimant was notified in a letter dated May 10, 2016:

As a result of investigation held on Tuesday, April 26, 2016 at 1000 hours at Gainesville Yard Office, 1328 N Dixon, Gainesville, TX, 76240 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for dishonesty in false reporting of pay records and FRA inspections beginning March 1, 2016 and continuing.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 1.6 Conduct.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative.

This letter will be placed in your personnel record.

The Carrier argues that Claimant listed several track inspections on days that his truck never left his driveway at his home. The evidence showed that he listed inspections that would have required track authority but that track authority was not obtained on those dates. Further, Claimant's explanation that his truck was in the yard for another Track Inspector to use is belied by the fact that the truck did not move during that period.

The Organization counters that there was no evidence of Claimant's falsifying inspections. He had valid explanations such as doing an inspection by train. Further, there is a signed statement

by ten other employees about how they were directed by the Roadmaster to avoid overtime and “make it up other ways.” Claimant was simply making up his time in other ways.

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.

MOWOR Rule 1.6 provides:

1.6 Conduct

Employees must not be:

1. Careless of the safety of themselves or others
2. Negligent
3. Insubordinate
4. Dishonest
5. Immoral
6. Quarrelsome or
7. Discourteous

The Board has reviewed the evidence. There are no procedural violations which void the discipline. On the merits we find that there is substantial evidence in the record to support the discipline. The evidence shows that Claimant submitted payment for work that he could not have performed. A Hyrail truck was required for some of the inspections and it did not leave Claimant’s house or yard when some of the inspections were allegedly performed. Track authority was required for some of the inspections and it was not obtained. Further, Claimant’s statements at the hearing that he was unfamiliar with TIMS or payroll are not convincing and do not negate his conduct.

Employees have a duty to do their job. The evidence shows that Claimant did not perform the track inspections that he reported as having completed. There is substantial evidence to support the finding of Rules infraction.

Given the nature of the infraction, the Carrier’s decision to dismiss Claimant was not an abuse of Carrier discretion.

Award:

Claim denied

A handwritten signature in blue ink, appearing to be "J.R. Bl", written over a horizontal line.

Organization Member

A handwritten signature in black ink, appearing to be "Brian Clauss", written over a horizontal line.

Brian Clauss
Neutral Member

A handwritten signature in black ink, appearing to be "James H. Rogers", written over a horizontal line.

Carrier Member