

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
)
v.)
)
BNSF RAILWAY COMPANY)

Carrier File No. 10-14-0082
Organization File No. C-14-D070-2

Claimant — Jay J. Steggall

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on January 24, 2014, when it dismissed Claimant Jay J. Steggall for violation of MWOR 1.6 Conduct, in connection with Claimant's alleged falsification of time worked submitted to PARS from the period of September 3, 2013 through and including October 28, 2013 while assigned to TMOX4628.
2. As a consequence of the violation referred to in part (1), Claimant's record should be cleared of the discipline and any mention of the investigation and shall be made whole for any losses.

BACKGROUND:

The Claimant entered service with the Carrier on June 6, 1994. At the time of the incident that resulted in his dismissal, he was working as a Machine Operator, based in Alliance, Nebraska.

In the fall of 2013, the Claimant was assigned to operate a weed mower at various locations throughout the Butte Sub and the Angora Sub, mowing the Carrier's rights of way along the tracks. The Carrier has an electronic timekeeping and payroll system, PARS, and employees have the responsibility to enter their time worked into PARS. On November 6,

2013, Division Engineer Mark Boyer was approached by an employee who reported to him that the Claimant had been falsifying his overtime records for the past two months. The weed mower assigned to the Claimant was leased from a third party, Platte Valley Equipment. Boyer contacted them and was able to obtain an electronic data read-out from the mower showing its start time (when it was turned on) and stop time (turned off) each day.¹ He compared that data to the Claimant's overtime reports for September and October and found a "huge discrepancy." He initiated the investigation as a result of that analysis.

Claimant was sent a Notice of Investigation dated November 8, 2013, indicating that an investigation would be held "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged falsification of time worked that you submitted to PARS from the period of September 3, 2013, through and including October 28, 2013, while assigned as a Mobile Weed Mower, assigned to TMOX4628. The date BMSF received first knowledge of this alleged violation is November 6, 2013."

The original hearing date was mutually postponed and the investigation was held January 14, 2014. At the hearing, Division Engineer Boyer went through a detailed analysis of Claimant's time reported in September 2013, compared to the hours that the mower was in operation. According to Boyer, Claimant's sole job was mowing; he had no other assigned job duties. Claimant's regular work hours were 0730 to 1600. His PARS records establish that on most weekdays, he came in at 6:30 a.m., an hour early, and claimed an hour of overtime for the early start. However, the mower operating (performance data) records show that the earliest the mower was started during the month of September 2013 was 0947, or 9:47 a.m. Boyer testified that the expected time to perform routine maintenance and safety checks on the mower before starting it should take about thirty minutes each day. Claimant had been given permission to work 12 hours a day, 7 days a week. Comparing Claimant's PARS data with the mower operating data, there were five dates which show that the mower was never turned on, yet Claimant put in for overtime.² Between September 26 and 29, the mower was operated 4.4 hours on September 26 and for

¹ The record includes a letter from Platte Valley Equipment explaining how the automatic electronic data system that was on the mower worked: "The performance data from each machine is automatically transferred to a data processing center operated by John Deere in the United States of America via a cellular network. Access to the cellular network is accomplished by a radio mobile (SIM-Card) built into the hardware-box in the machine. The data center consolidates and analyzes the Performance Data and creates reports, related to parameters such as fuel consumption, operational status, usage/non-usage, usage efficiency etc. ('Performance Reports')..." Regarding problems with spotty cellular coverage, Boyer testified that he was informed by Platte that the data is stored on the equipment until such time as it can all be uploaded onto the cellular network, so there are no gaps in the data.

² September 6, 2013 (8 hours straight time/1 hour overtime); September 10 (8 straight, 3 overtime); September 27 (8 straight/4 OT); September 28 (0 straight; 8 OT); September 29 (0 straight; 8 OT). September 6 and 30 there were service calls for the mower. September 28 and 29 were a Saturday and Sunday, Claimant's normal rest days.

1 minute on September 27. It was not operated at all on September 28 and 29. Claimant entered into the PARS system 8 hours straight time and four hours overtime for September 26 and 27, and zero hours straight time and 8 hours overtime for September 28 and 29. Claimant's PARS records and the mower performance data for October 2013 show similar discrepancies in the number of hours Claimant entered into the PARS system and the amount of time the mower was actually in operation, including several dates on which the mower was not turned on and Claimant put in for overtime.³ The pattern of regularly starting work an hour early, at 6:30 a.m., continued, with three days on which Claimant started work at 5:30 a.m. The earliest start time shown in the mower performance data for October 2013 was 8:19 a.m.

The Claimant testified regarding some of the apparent discrepancies in his time records compared to the mower data. On September 28 and 29, he was in South Dakota waiting for the mower to be repaired and the parts did not arrive until late Sunday. He arrived early to participate in a daily conference call at 7:30 a.m. When asked if he was entitled to overtime for coming in early, he responded, "Driving my personal vehicle, uh, I felt that I, that I was entitled to it." He explained that the job is not just mowing: sometimes he has to wait for local servicing gangs to bring fuel; sometimes he has to wait for parts, sometimes as long as three or four days; he has to "shuffle" between the mower and his personal vehicle, periodically bringing his vehicle up to where the mower has moved. His commute to work from home to the Butte Subdivision is about an hours and forty minutes each way and he charged overtime for the drive time home. Claimant testified that he does not keep a daily work diary and he was unable to recall what he was doing on some of the dates he put in for overtime. He also mentioned that he met with a BNSF counselor once or twice a week and it was his understanding that he would be paid for that time. Scott Taylor, Roadmaster for the Butte Subdivision, testified that Claimant attended some but not all of the morning conference calls. If there are problems with equipment, employees are supposed to report that to their supervisors, who will look for other work for them to do. The only problem Taylor recalled the Claimant reporting with his mowing machine was a broken window. As Claimant's supervisor, Taylor reviewed his time records. Taylor testified that he did not question Claimant's hours because "we only have the weed mower for so long, we only get it for so long, and Boyer said weekend work, working overtime to get mowed across everybody's territory. So I figured it was all legit because Mark had gave him the okay to work the overtime and the weekends and so."

By letter dated January 24, 2014, the Carrier notified Claimant that he had been found in violation of MWOR 1.6, Conduct, for falsifying his time worked records as

³ October 4, October 16, and October 21.

charged in the original notice of investigation. The discipline assessed was dismissal, effective immediately.

FINDINGS AND OPINION:

Public Law Board 7602, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein.

The Carrier found Claimant in violation of MWOR 1.6, Conduct, which states:

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

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated.

The charges against the Claimant focused on paragraph 4, "Dishonest," specifically in relation to his claimed overtime hours from September 3 through October 28, 2013.

The investigatory hearing produced extensive documentation regarding Claimant's hours during the relevant time period, along with electronic production data from the manufacturer documenting how many hours the weed mower he was assigned was actually in operation. The time pressure of getting the rights of way mowed before winter made it impossible to mow, District Engineer Mark Boyer had told the Claimant that he was authorized to work up to 12 hours a day, 7 days a week. Boyer advised Claimant's supervisors, Scott Taylor, Roadmaster in the Butte Subdivision, and Jerome Wenger, Roadmaster in Alliance, Nebraska (the Angora Subdivision), of Claimant's authority to work overtime. When employees work out in the field, as Claimant did, the Carrier must rely on them to report their hours on the PARS electronic timekeeping system honestly. In light of Boyer's authorization to the Claimant, Taylor and Wenger assumed that Claimant's

PARS entries were correct. It was not until another employee reported suspicions about Claimant's overtime to Boyer on November 6, 2013, that the Carrier had any inkling that there might be a problem.⁴ Boyer investigated and was concerned about what he saw. That evidence was the basis of the Carrier's case at the investigatory hearing.

Claimant's regular assigned working hours were 0730 to 1600. The time records establish that during the relevant time period, he had a practice of coming in to work at 0630. Boyer testified that the Carrier will permit employees to come in early on overtime if they are ready to start work at the beginning of their shift (here, 0730). Boyer estimated that it should take about thirty minutes for Claimant to complete whatever preliminary maintenance and other tasks needed to be done before Claimant was ready to go into the field and mow. Yet the earliest start time for the mower shown on the relevant performance data was 0819. In fact, of the 30 dates in question, Claimant did not start mowing for over three hours after he started work on 21 of them. One has to wonder just what he was doing. A few days' late start would be understandable; in Claimant's case, starting to mow hours after the start of his shift was routine. The data also shows a number of dates when the Claimant did not start mowing until well into his shift and then continued mowing until well after his normal quitting time, 1600. For instance, September 3 shows that Claimant reported for work at 0630. The "mower on" starting time was not until 1447—more than 8 hours later—with a mower shutoff time of 1822. At first glance it appears that Claimant would certainly be entitled to be paid overtime because he worked past the end of normal shift at 1600—but for the fact that if he had started mowing earlier in the day, overtime would not have been required to complete the same amount of mowing. The same "late start" pattern shows up on a number of other dates (see, *e.g.*, September 8, 11, 24 and 26).

When asked why he came in to work early, Claimant stated that he wanted to be present for a conference call that took place daily at 0730. However, neither Taylor nor Wenger, who conducted the calls, could recall the Claimant ever being at one. While his supervisors might not remember his being at all of them, the fact that they could not remember his attending *any* of the calls undermines the credibility of Claimant's testimony. Claimant also testified that he charged one hour overtime at the beginning of the day for the time he spent driving to work. Rule 35.F of the parties' Agreement clearly states that time spent driving from one's home to the daily assembly point (*i.e.*, commuting time) does not qualify for overtime (or any other compensation). Claimant stated that he thought he was entitled to it. Even if he never read the collective bargaining agreement, years of experience

⁴ The Organization raised a procedural objection to the timeliness of the charges lodged against Claimant. However, the evidence in the record regarding the Carrier's "first knowledge" establishes that November 6, 2013, is the correct date, and the November 8, 2013, notice of investigation was timely.

on a variety of mobile gangs would have informed him otherwise, and his testimony on that point was not persuasive.

Moreover, this is not the first time that Claimant has been disciplined for falsification of payroll. In January 2011, he was disciplined for leaving work without permission and submitting a timesheet entry for time not worked. That case came before this Board, which upheld the discipline. (*See*, PLB 7602, Case No. 1) In March 2013, Claimant was disciplined for falsification of information on an accident report, discipline that was not grieved. His past disciplinary history, therefore, shows that Claimant had specific personal notice of the Carrier's expectations regarding reporting of hours worked. The Organization argues that Claimant never got a "clear directive" about how to report his hours. Given his past history, one would think that if Claimant had any questions about whether he was entitled to report certain time as hours worked, he would have asked someone rather than decide the matter for himself.

Similar problems and questions are raised with the time reported at the end of the day. There was no testimony about how long it would take for Claimant to finish his day's work after shutting down the mower. The data includes a few dates where the time between when the mower was turned off and Claimant clocked out was less than half an hour (September 3: 8 minutes; October 26: 13 minutes). But even if we assume that it takes an hour to close up shop, so to speak, the data shows a pattern of excessive hours claimed. There are eight dates where Claimant did not clock out until approximately four hours or more after shutting off the mower. Moreover, Claimant was unable to explain what he was doing when he was supposed to be working overtime. However, he also testified that he had charged overtime for the time spent driving home from work, an estimated hour and forty minutes. As with time driving to work in the morning, employees are not entitled to charge time spent driving home as overtime hours.

Perhaps the most disturbing payroll entries were the dates when the Claimant put in for overtime when he did not perform any mowing at all for the entire day (*i.e.*, the data showed that the mower was "off" the entire day): September 10 (3 hours overtime claimed); October 4 (3 hours overtime claimed); October 16 (1 hour overtime claimed); and October 21 (1 hour overtime claimed).⁵ Claimant had no explanation for why overtime was required on such days.

⁵ This omits September 28 and 29, when Claimant testified that he sat by the mower all day for two days straight, waiting for a mechanic to show up with parts needed to repair the machine. It also omits September 9, when Claimant put in for one hour of overtime to travel to a DOT physical. Again, employees are not reimbursed for travel time outside their normal working hours to go to the required physicals—a fact that Claimant, with his years of experience with the Carrier, has to have known, or should have known.

In fact, the Claimant was unable to explain what he was doing for most of the claimed overtime. Employees cannot be expected to have perfect memories as to what they were doing every day over a period of almost two months. But his lack of memory, coupled with the “time mowed” analysis in the data, suggests that the Claimant was playing fast and loose with the authority he had been given to work substantial overtime in an effort to complete mowing throughout the District before winter set in. According to the “time mowed” data, Claimant spent at most 9.1 hours mowing (on one day, September 4; the next highest number of hours mowed were 7.9 and 6.8), and as little as no time mowing. Of the days when he did mow, the average number of hours mowing was 4.9—substantially less than Claimant’s normal 8-hour working day (even accounting for some time each day spent on other tasks). When the amount of mowing could, for the most part, easily have been completed within Claimant’s normal working hours, it is hard to see why he was working such significant amounts of overtime on a routine basis.

In the end, Claimant’s explanations about how he spent the time he charged to the Carrier for overtime are for the most part unpersuasive and self-serving. The most likely explanation for Claimant’s significant overtime is that the Claimant took advantage of the blanket overtime approval he was given to “pad” his hours—which is another term for falsification. Working out in the field as he did, his supervisors had no reason to believe that he was not working the hours he claimed. The evidence in the record supports the Carrier’s conclusion that Claimant put in for time he had not worked and for commuting time that he was not entitled to be paid overtime for. Its determination that he had violated MWOR 1.6, Conduct, #4 Honesty, was supported by the record. Dishonesty is widely recognized as a basis for immediate termination. As this Board stated in Claimant’s prior award:

... [C]laiming pay for time not worked is a serious offense. This is especially true where employees work out in the field and management has to rely on their honesty and integrity in reporting time worked. For every incident where an employee is found to have misreported his time, there are likely to be many more instances, involving many more employees, where false time reports went undetected. For that reason, time fraud when it is discovered is subject to serious discipline, up to and including termination.

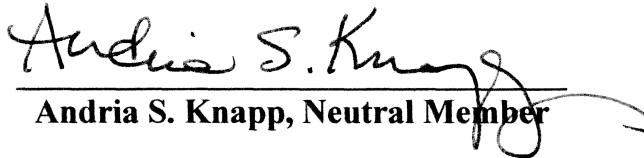
The Organization argues that Claimant did not deliberately falsify his time records and should be given the opportunity to repay any amounts that he was overpaid. That argument might be more persuasive if this employee had not previously been disciplined for two other instances of dishonesty. Clearly the prior discipline did not have the effect of reforming Claimant’s conduct. The Carrier’s conclusion that termination was the appropriate discipline in this case was not arbitrary, unreasonable or excessive, and the claim is accordingly denied.

AWARD

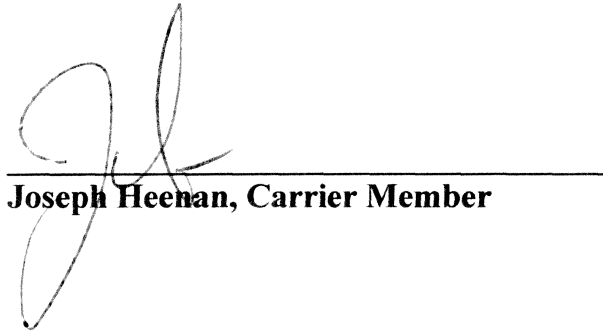
Claim denied.

ORDER

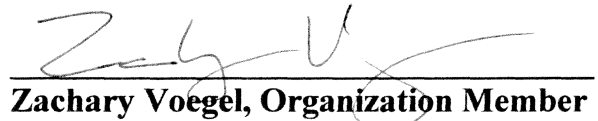
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



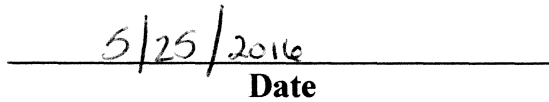
Andria S. Knapp, Neutral Member



Joseph Heenan, Carrier Member



Zachary Voegel, Organization Member



Date