

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)	
DIVISION - IBT RAIL CONFERENCE	)	Case No. 43
and	)	
	)	Award No. 43
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY)	)	
	)	

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: February 25, 2010

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

1. The dismissal of Uni-van Technician Joel W. Klingler for conduct unbecoming an employe in connection with providing false payroll information for June 7, 2009 and misrepresentation of the performance of duties on June 6, 2009 is based on unproven charges, unjust, unwarranted and in violation of the Agreement (Carrier's File MW-CHAR-09-04-02).
2. As a consequence of the unjust dismissal referred to in Part 1 above, Mr. Klingler shall be granted remedy in accordance with Rule 30 Of the Agreement."

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

AWARD:

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that Claimant was notified to appear for an investigation on June 30, 2009. The notice charged the Claimant with conduct unbecoming an employee for providing false payroll information in claiming 17 hours of overtime for Sunday, June 7, 2009 that was allegedly not worked, making false representations concerning the performance of duties on Saturday, June 6, 2009 when Claimant falsely indicated that he was at the work site working on a

generator and failure to follow instructions and unauthorized absence in leaving the work site on Saturday, June 6, 2009 while feigning to be there working, when in fact, Claimant was driving home. The Hearing was postponed until and held on July 30, 2009. On August 11, 2009 Claimant was advised that he had been found guilty of the charges and that he was dismissed from service.

The Organization maintains that Claimant had no intent to defraud the Carrier and, in fact, thought that he was actually entitled to the time claimed. The Organization further contends that because there is no evidence of Claimant being dishonest that the penalty of dismissal is excessive and cannot stand.

Carrier argues that it proved the charges by substantial evidence. Carrier further contends that, in light of the severity of the offenses, dismissal was appropriate.

Claimant, who had seniority dating to March, 2005, was working as a Uni-vac Technician at the time in question setting up portable trailers to lodge a rail gang. On Friday, Saturday and Sunday, June 5 -7, 2009, Claimant was assigned to work overtime as needed to set up the trailers to house the rail gang that would be arriving on Sunday evening. A technician from the company that provides generators to power the trailers was also present to assist Claimant. It is undisputed that Claimant telephoned his supervisor on Saturday morning to advise him that one of the generators was not working. The supervisor testified that he suggested some troubleshooting checks Claimant should make and instructed Claimant to check back with him later in the day. When Claimant called his supervisor to advise him that neither him nor the generator company technician could get the generator running the supervisor related that he informed Claimant that he would contact the generator manufacturer for additional technical assistance. Rather than waiting for the manufacturer to call with assistance, Claimant left the job site at 11:30 am and drove twelve (12) hours back to his home in Ohio.

Claimant, the record reveals, had three telephone conversations with his supervisor and two telephone conversations with the generator manufacturer during his return trip to Ohio. During those conversations, Claimant never let on that he was not on the job site. The Supervisor tried to call Claimant once more that evening at his hotel room in Mechanicsville, but obviously, Claimant was not there to answer the telephone. That night, after Claimant arrived at home, the supervisor drove past Claimant's home around 11:00 pm and saw Claimant's Company vehicle parked in the driveway.

The next morning, Claimant left a message on the supervisor's phone stating that the trailers were all set up. About a half an hour later, Claimant again called his supervisor, updated him as to what was going on in Mechanicsville and stated that he had personal business at home and that he needed to come home and have Monday off. The supervisor, who had seen the Carrier's truck at Claimant's home the night before, instructed Claimant to be careful coming home and to report to the office, which was also in Claimant's home town, on Monday morning.

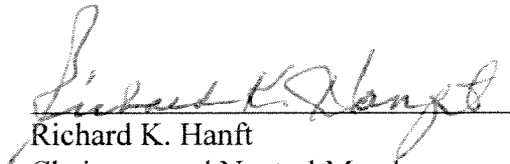
Claimant reported to Carrier's office on Monday morning and was asked to report his

time for the prior week. When Claimant handed his supervisor a paper claiming overtime for Sunday, June 7 the supervisor removed Claimant from service.

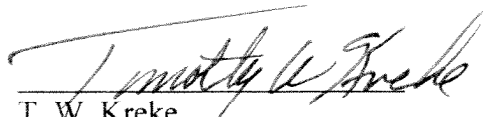
The Organization argues that at no time during any of the phone calls Claimant made to his supervisor on Sunday, June 7, 2009 did Claimant lead his supervisor to believe that he was still in Mechanicsville, New York on the job site. However, the record reveals that Claimant stated in his Sunday morning phone call to his supervisor that he needed to come home from Mechanicsville to attend to personal business, when in fact he had arrived home in Ohio the night before.

Moreover, while the Organization does not dispute the material fact that Claimant did turn in seventeen (17) hours of overtime pay for Sunday, June 7, 2009 that he had not worked on that day, it asserts that in so doing, Claimant had no intent to defraud Carrier, but was merely carrying over and reporting overtime that he had previously worked. The Claimant, however, testified at the investigation that it is not a normal procedure to carry over overtime onto another day and Claimant's only explanation when questioned about the claim submitted for time not worked was that he had "messed up."

Accordingly, we conclude that the Carrier proved the violations Claimant was charged with by substantial evidence. Violations, such as those proven here, which involve dishonesty are extremely serious and warrant a most severe penalty. Based on the record before us, we cannot say that the penalty assessed was arbitrary, unjust or unsupported by the record. Hence, we can find no basis to sustain the claim. The Claim is denied.


Richard K. Hanft
Chairman and Neutral Member
Dated at Chicago, IL May 8, 2010


D. L. Kerby
Carrier Member
Dated: 6/18/10


T. W. Kreke
Employee Member
Dated: June 18, 2010