

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD 7048

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BNSF RAILWAY COMPANY

(Former ATSF Railway Co.)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case No. 12

NMB Case No. 106

Carrier File No. 14-07-0150

Organization File No. 110-13D2-071.CLM

Claimant: Jimmy L. Johnson, Jr.

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing June 1, 2007 when the Claimant, Jimmy L. Johnson, Jr. (1639616), was dismissed for dishonesty for paying himself time not worked on Friday, May 18, 2007 while assigned as the Foreman of a crossbuck gang in Brownwood, Texas violating Rule 1.5-Conduct and Rule 1.15-Duty Reporting or Absence of the Maintenance of Way Operating Rules and Engineering Instructions G.3.1-Foremen, Track Supervisors, Track Inspectors and Bridge Inspectors Roles and Responsibility; and
2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate the Claimant with all seniority, vacation, all rights

unimpaired and pay for all wage loss commencing June 1, 2007, continuing forward and/or otherwise made whole.

This claim was discussed in conference between the parties.

### NATURE OF THE CASE

The Claimant, Jimmy L. Johnson, Jr. was dismissed from all service following allegations of dishonesty arising from a payroll entry he made as Foreman of a Crossbuck Gang in Brownwood, Texas concerning work performed on May 18, 2007. According to the Carrier, the Claimant fraudulently claimed eight hours' pay for himself and his subordinate when the Claimant left work after one hour on Friday, May 18, 2007. The Carrier contends that the grievant knowingly and intentionally falsified his time records in an attempt to be paid for work not performed, thus violating Rules 1.5-Conduct and 1.15-Duty Reporting or Absence of the Maintenance of Way Operating Rules and Engineering Instructions G.3.1-Foremen, Track Supervisors, Track Inspectors and Bridge Inspectors Roles and Responsibility, which prohibit employee dishonesty.

The Organization grieved the removal from service, contending that the Claimant had committed a simple payroll entry error, which he voluntarily attempted to correct as soon as he was apprised of the error by his supervisor. The process of correcting the error was complicated by the fact that the supervisor had suspended the claimant's access to

the PARS payroll authorized payroll system when the Claimant was removed from service on or about June 1, 2007. The Organization contended that the Carrier's imposition of discipline was procedurally improper because the Statement of Claim failed to identify a particular rule that the Claimant allegedly violated. The Organization further contended that the Claimant's unfamiliarity with the PARS system rendered the penalty of removal from all service or dismissal unduly harsh in view of his relatively minor error.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was submitted to Public Law Board 7048 for adjudication.

#### FINDINGS AND DECISION

The Public Law Board No. 7048 (the Board) finds that the parties herein are Carrier and Employee Organization within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and subject matter involved.

The Organization contends that the instant case involves a simple clerical error that the Claimant tried unsuccessfully to fix because he was precluded by his supervisor's action of shutting off the Claimant's

access to PARS when he was removed from service on June 1, 2007. If the instant case could reasonably be construed as simply a clerical error or an honest mistake, then the Carrier's decision to remove the Claimant from service would properly be characterized as unduly harsh and excessive. However, several factors mandate a finding that the Claimant's actions were deliberate and dishonest. The Claimant acknowledged in his testimony that he violated the three rules that are applicable to the instant case, (Maintenance of Way Operating Rule 1.6, Maintenance of Way Operating Rule 1.15, and Engineering Instruction G.3.1) (Transcripts pages 65 and 66)

First, the Claimant's entry for a full eight hours of pay on Friday, May 18, 2007 when he submitted his time records the following Monday were attributable to exhaustion experienced from traveling a round trip to Arkansas over the weekend to deal with an urgent family matter, the Claimant made no effort to inspect or revise his time records until he was notified by his Supervisor regarding the anomaly. The Supervisor was alerted to the potential error not only by the Claimant's recent prior history of abuse of overtime and other inaccurate or overreaching entries in time records he submitted, but also by the fact that a member of the Claimant's crew, Mr. Dickey, whom the Claimant stated had gone home early with the Claimant after one hour of work because of inclement weather, including thunderstorms and lightening, that rendered it unsafe

to continue working, in fact continued to work the balance of his shift on May 18, 2007. The fact that Mr. Dickey continued his work unhampered by inclement weather substantially undermines the Claimant's contention that he ceased his work after one hour and abandoned his assignment because it was unsafe to continue.

That the Claimant also arranged to rescind the eight hours paid to Mr. Dickey may be attributable to the Claimant's assumption that Mr. Dickey also ceased his endeavors on May 18, 2007. Although the evidentiary record refutes this assumption, the Claimant may reasonably have assumed that Mr. Dickey did not work the balance of his shift after the Claimant ceased working. Mr. Dickey's activities diminished the credibility of the Claimant's assertion that he legitimately stopped work, and thus that his allegedly inadvertent entry of eight hours the following Monday was an honest oversight. If the Claimant had truly attempted to fix his error before the Employer had discovered it, then the Organization would prevail as there would be no just cause to terminate an employee for a simple clerical error. However, the Claimant did not evaluate his timesheet, as he alleges was his practice. Moreover, the Claimant's attempts to charge overtime on his timesheet from the time he eloped until his scheduled 6:30 stop time or from the time he arrived at a depot, rather than his scheduled start time, further undermined the Claimant's credibility. Although he may have desisted when this abuse of overtime

was discovered, his activities created a legitimate cause for concern by his supervisor, who then closely monitored the Claimant's timesheets. The Claimant's pushing the limits until caught do not constitute a simple oversight.

Neither can the Claimant's misconduct be explained or excused as simply his ineptitude in operating the PARS computerized payroll system, as there is no evidence that the Claimant would have corrected his seven hours overpayment for May 18, 2007 but for the discovery of his actions by his Supervisor. His backtracking to avoid actual overpayment by the Carrier does not excuse his inaccurate entry, which the Carrier reasonably construed as deliberate, given the Claimant's prior abuse of overtime and misinterpretation of timekeeping standards in his prior short tenure at working for this Supervisor.


Moreover, the Supervisor provided a ten-day interval for the Claimant to check his work and amend the time records on his own before the Claimant was barred from entering the PARS System. Even if all of the Claimant's assertions were fully credited, he admits having violated Rule 1.5, 1.15 and Engineering Instructions G.3.1. Absent a voluntary attempt to revise his intentionally inaccurate time entry, regarding May 18, 2007, the Claimant was reasonably deemed culpable for his serious misconduct.

The Carrier's characterization of this misconduct is fully supported by the fact that the Claimant did not notify his supervisor when he ceased work after one hour on the morning of Friday, May 18, 2007. Had the Claimant followed the standard operating procedure and advised his supervisor, as he was required to do, that he had dismissed his crew because inclement weather had created unsafe working conditions, then the Claimant's purportedly inadvertent routine entry of eight hours when he prepared his timesheet the next week would entitle the Claimant to the benefit of the doubt. The Claimant's failure to notify his supervisor as required when he ceased his assignment further supports the Carrier's contention that the Claimant intentionally sought to be paid for work he did not perform.

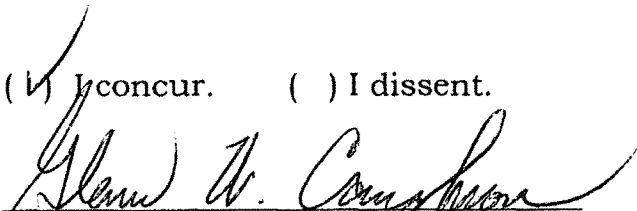
At issue in the instant case is whether the penalty of removal from service or dismissal is unduly harsh. If there had been no prior instances of abusing overtime and entering improper time records in order to receive money to which he was not entitled, the Claimant would be given the benefit of the doubt and a penalty less severe than dismissal would be appropriate. However, given the evidentiary record regarding the Claimant's attempts to be paid for time to which he was not entitled, the Carrier introduced substantial credible evidence of dishonesty that constitutes just cause to terminate the Claimant's employment. In order

to find in favor of the Claimant, the Board would have to conclude not only that the Claimant's error was inadvertent and caused by exhaustion, but that the thunder and lightning justified the Claimant's ceasing his work and leaving without notifying his supervisor. The facts created by the evidentiary record preclude such a finding. Therefore, the instant claim must be denied.


We so find.

  
Daniel F. Brent, Impartrial Chair

Dated: 6-3-09

() I concur.      ( ) I dissent.  
  
Glenn W. Caughron, Carrier Member

Dated: 6-18-09

() I concur.      ( ) I dissent.  
  
David Tanner, Organization Member

Dated: 6-15-09