

**NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT**

BURLINGTON/NORTHERN/SANTA FE

AND

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES**

**Claimant:
Mark P. Jorland**

**CASE NO. 37
AWARD NO. 38**

On February 2, 2001, the Brotherhood of Maintenance of Way Employees (“Organization”) and the Burlington Northern/Santa Fe (“Carrier”) entered into an Agreement establishing a Special Board of Adjustment in accordance with the provisions of the Railway Labor Act. The Agreement was docketed by the National Mediation Board as Special Board of Adjustment No. 1112 (“Board”).

This Agreement contains certain relatively unique provisions concerning the processing of claims and grievances under Section 3 of the Railroad Labor Act. The Board’s jurisdiction was limited to disciplinary disputes involving employees dismissed, suspended, or censured by the Carrier. Moreover, although the Board consists of three members, a Carrier Member, an Organization Member, and a Neutral Referee, awards of the Board only contain the signature of the Referee and they are final and binding in accordance with the provisions of Section 3 of the Railroad Labor Act.

Employees in the Maintenance of Way craft or class who have been dismissed or suspended from the Carrier’s service or who have been censured may choose to appeal their claims to this Board. The employee has a sixty (60) day period from the effective date of the discipline to elect to handle his/her appeal through the usual channels (Schedule Rule 40) or to submit the appeal directly to this Board in anticipation of receiving an expedited decision. An employee who is dismissed, suspended, or censured may elect either option. However, upon such election that employee waives any rights to the other appeal procedure.

This Agreement further established that within thirty (30) days after a disciplined employee notifies the Carrier Member of the Board, in writing, of one’s desire for expedited handling of this appeal, the Carrier Member shall arrange to transmit one copy of the notice of the investigation, the transcript of the investigation, the notice of discipline and the disciplined employee’s service record to the Referee.

These documents constitute the record of the proceedings and are to be reviewed by the Referee.

The Agreement further provides that the Referee, in deciding whether the discipline assessed should be upheld, modified, or set aside, will determine whether there was compliance with Schedule Rule 40; whether substantial evidence was adduced at the investigation to substantiate the charges made; and, whether the discipline assessed was arbitrary and/or excessive, if it is determined that the Carrier has met its burden of proof.

In the instant case, this Board has carefully reviewed each of the above-captioned documents prior to reaching findings of fact and conclusions.

BACKGROUND FACTS

Claimant, Mark P. Jorland, Section Foreman for Burlington Northern Santa Fe Railroad, has been charged with dishonesty, misuse of the Company vehicle and the falsification of the time roll on August 22, 2001. It was determined, based upon an investigation on October 9, 2001, that discipline should be assessed by a thirty day (30) suspension and one (1) year probation. The investigation was held at 80-44th Ave., Northeast in Minneapolis, Minnesota.

This investigation reveals that Special Agent Norak was called by Roadmaster Morris to establish whether the Claimant drove the Company vehicle from Elk River, Minnesota on August 22, 2001. Exhibit G shows three digital pictures were taken of the BNSF vehicle parked at the Claimant's home. These pictures were turned over to Maintenance Way Supervisors. The alleged violations involve Maintenance of Way Operating Rules, 1.6 Conduct, and Rule 1.19, Care of Property, which are as follows:

Maintenance of Way Operating Rule 1.6, Conduct

Employees must not be:

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

Maintenance of Way Operating Rule 1.19, Care of Property

Employees are responsible for properly using and caring for railroad property. Employees must return the property when the proper authority requests them to do so. Employees must not use railroad property for their personal use.

FINDINGS AND OPINION

It is the position of the Organization that the Claimant was not dishonest. That is, the Claimant had a right to claim eight (8) hours of straight time from 7:00 AM until 3:00 PM. As well as 4½ hours of overtime from 4:30-7:30 PM. Moreover, the Organization asserts that the Contract Interpretation Committee's Agreement dated July 27, 1994, states that –if an employee works more than three (3) hours with his regular shift, he is entitled to an additional meal period. However, this additional meal period was not calculated by the Carrier within the overtime claimed by the Claimant. In addition, the Organization also points out that it was standard operation procedure to allow employees to use Company vehicles. As a matter of fact, the Organization notes that the Claimant has used the Company vehicle on a previous occasion when he was the Elk Section Foreman to save time and for convenience. Therefore, the Organization argues that it is unfair to now charge the Claimant with unauthorized use of a vehicle on August 22, 2001. Thus, the Organization asserts that the Claimant had no intention of defrauding the Company in his use of the Company vehicle. The Organization adds that he is a hard-working employee who has been with the Carrier for almost twenty-eight (28) years with an impeccable work record. Based on all of the above, the Organization requests that the Board rescind the thirty (30) day suspension and the one (1) year probation as well as expunge his record.

The Carrier retorts that the Claimant knowingly violated Rule 1.19 by using the Company vehicle for personal use without permission. Contrary to the Organization's contention of past practice, the Carrier counters that there was no history of past practice involving such usage. In addition, the Carrier contends that the Claimant also violated Rule 1.6, as he was dishonest when he falsified his time roll and his misuse of the Company vehicle. Specifically, the Carrier asserts that the Claimant should not have claimed from 1500 to 1700, two hours at the overtime rate on August 22, 2001, as shown in Exhibit D.

In response to the Organization's argument that an employee is entitled to an additional meal period, the Carrier responds that the Claimant knows that there is only "one bean period of 20 minutes" from 7:00 AM to 3:00 PM at the job site.

The Carrier adds that the Claimant's time claim was not accurate because the additional bean period only referred to going back and forth from Elk River. In other words, Supervisor Shea asserts that the Claimant was probably headed home and had completed his duties from 1500 to 1700, the time, which the Claimant claimed to be using his additional bean time. Based on the above, the Carrier requests the Board to suspend the Claimant for thirty (30) days with one (1) year probation.

After a careful review of the record, the Board finds that dishonesty is a serious charge. The record reveals the following information:

- (i) The Claimant used a Company vehicle without authorization on August 22, 2001.
- (ii) He drove the Company vehicle to his house without permission.

Thus, the Board must conclude that Rule 1.19 was violated because the Claimant used "railroad property" for his "personal use" since this usage was not authorized.

In response to the Organization's argument regarding the falsification of the time roll, the Board finds that the Claimant's explanation is insufficient to explain the circumstances, which brought about this discrepancy in time. Moreover, this misunderstanding of the usage of overtime hours is unfortunate. However, the violation of Rule 1.19 coupled with Rule 1.6 is significant to note, as the common denominator is the same, dishonest conduct. Although the Claimant is a long-term employee with an excellent work record, the Board finds the seriousness of these collective violations require the implementation of a thirty (30) day suspension with one (1) year probation to be assessed. The Board does not find this assessment to be arbitrary, capricious nor excessive. Based on the above, the Board finds that the Carrier has met his burden of proof, as required.

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This appeal is denied. Accordingly, the Claimant is suspended for thirty (30) days with a one (1) year probation for the aforementioned reasons.



**A. Y. McKissick
Neutral Chair
SBA No. 1112**

Dated: January 24, 2002