

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	Case No. 228
)	
)	Award No. 228
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
<u>NORFOLK & WESTERN RAILWAY COMPANY</u>)	

Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. K Megginson, issued by letter dated May 10, 2017, in connection with his alleged: (a) failure to follow instructions in that on numerous occasions beginning January 1, 2017 he took his Carrier-owned vehicle home at night after being instructed not to do so; (b) failure to follow instructions and DOT regulations in that on multiple occasions beginning January 9, 2017 he failed to properly maintain a driver’s log book when traveling outside of a one hundred (100) air mile radius; (c) conduct unbecoming an employee in that he submitted payroll information for overtime service that he did not perform on numerous occasions beginning on January 2, 2017; (d) conduct unbecoming an employee in that he submitted payroll information for overtime service that he was unauthorized to perform on numerous occasions beginning on January 2, 2017; (e) failure to follow instructions in that it was discovered on March 27, 2017, that on numerous occasions between April 22, 2016, through December 31, 2016 that he took his Carrier-owned vehicle home at night after being instructed not to do so; and (f) conduct unbecoming an employee in that it was discovered on March 22, 2017, that he submitted payroll information for overtime service that he did not perform on numerous occasions between April 22, 2016 and December 31, 2016, was unjust, unfair and contrary to the time limit allowed by the current Maintenance of Way Agreement, inequitable, unbalanced, disproportionate, unjust, arbitrary and capricious (Carrier’s File MW-BLUE-17-31-LM-206 NWR and MW-BLUE-17-42-LM-276 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Megginson shall receive be immediately reinstated with all back pay, rights, privileges and have all charges expunged from his record.”

FINDINGS:

Special Board of Adjustment No. 1048, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within

the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedence in any other cases.

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

Claimant in this matter was, at all times relevant, a Material Handling Truck Operator on Carrier's Eastern Region. Covering an expansive territory, Claimant may have worked for one (1) of two (2) track supervisors on the region. At the time this investigation took place Claimant had 27 years' service with the Carrier. The investigation into these matters took place on April 27, 2017 and concerned several rules violations the Claimant was accused of perpetrating, to wit:

That Claimant failed to follow instructions on numerous occasions beginning on January 1, 2017 when Claimant took the Carrier-owned vehicle home at night after being instructed not to do so; that Claimant failed to follow instructions and Department of Transportation regulations in that on multiple occasions beginning January 9, 2017 Claimant failed to maintain a Driver's Logbook when traveling outside of a one hundred (100) air mile radius; that Claimant engaged in conduct unbecoming an employee in that he submitted payroll information for overtime service he had not performed on numerous occasions beginning on January 2, 2017; that Claimant engaged in conduct unbecoming an employee in that he submitted payroll information for overtime service that he was unauthorized to perform on numerous occasions beginning on January 2, 2017; That Claimant failed to follow instructions in that it was discovered on March 27, 2017 that on numerous occasions between April 27, 2016 and December 21, 2016 that Claimant took the Carrier-owned vehicle home at night after being instructed not to do so; and, that Claimant engaged in conduct unbecoming an employee when he submitted payroll information claiming overtime service for overtime not performed.

The Organization contends that the Carrier failed to comply with Rule 30 of the Agreement that requires the Carrier to bring charges of alleged wrongdoing within thirty (30) days its first knowledge of a possible offense.

The record produced on the property provides that suspicion concerning Claimant's reported overtime arose upon the track supervisor's review of an overtime pay submission for February 17, 2017. A Telemetric Report ordered by the Assistant

Division Engineer concerning the Material Handling Truck's location and movement was received on March 13, 2017, clearly within thirty (30) days of the suspicious overtime submission. The receipt of that report and its comparison to Claimant's reported hours of service constituted Carrier's first knowledge of the alleged wrongdoing and a charge letter was executed on March 21, 2017, eight (8) days later. An investigation to explore the discrepancy in the hours of work reported and the hours the truck was in service was scheduled for April 11, 2017, still within thirty (30) days of Carrier's first knowledge of hours reported not matching the truck's movements. By mutual consent of the parties, the investigation was held on April 27, 2017. The Board can find no violation of Rule 30 in Carrier's handling of the dispute on the property.

Further the Organization complains, the Carrier failed to meet its burden of proof. The record developed on the property, however, demonstrates otherwise. Claimant admitted to claiming hours that he was either unauthorized to work or plainly did not work, but tried to explain away his false and unauthorized time submissions as simply "mistakes" on his part and that despite the "mistakes", he was always trying to do right by the Carrier. While the Board recognizes that "mistakes" do inadvertently happen, what this record demonstrates amounts to more than an inadvertent "mistake". Claimant in this matter made "mistakes" totaling three hundred sixty (360) hours and over \$14,000.00 in unearned or unauthorized pay.

Moreover, Claimant admitted that he took Carrier's truck home nightly despite the track supervisors' instruction not to do so, but brushed that continuing violation away with the rationalization that that rule is not strictly enforced. The Board was not convinced that the record demonstrates that it is acceptable for an employee to repeatedly disobey a supervisor's direct order.

Finally, the Organization maintains that given Claimant's relatively long service record with minimal disciplinary entries thereon, that the ultimate penalty of dismissal is arbitrary and unwarranted.

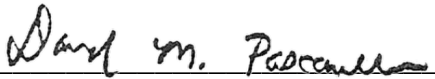
In this matter what the Claimant was found responsible for, submitting payroll information that falsely claimed pay for overtime not worked or unauthorized by supervision, amounts to dishonesty. Dishonesty is a dismissible offense. Claimant, by his own actions has destroyed the trust relationship with the Carrier. Nothing on this record mitigates nor negates Claimant's actions. The Board can find no basis to disturb the discipline assessed on the property.

AWARD:

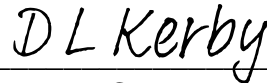
Claim denied.

A handwritten signature in cursive script that reads "Richard K. Hanft".

Richard K. Hanft, Neutral Chairman

A handwritten signature in cursive script that reads "D. M. Pascarella".

D. M. Pascarella, Labor Member

A handwritten signature in cursive script that reads "D L Kerby".

D. L. Kerby Carrier Member

Dated at Chicago, Illinois, November 21, 2018.