

**PUBLIC LAW BOARD NO. 5332**

**SYSTEM COUNCIL NO. 6  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**and**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Case No. 213**

**Statement of Claim:**

Claim on behalf of Electrician Jason Trautwein in Bellevue, Ohio, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Trautwein is unjustly withheld from Carrier's service. We also request his personal record be cleared of this matter.

**Background**

In February 2021, Claimant Jason Trautwein—an employee with tenure dating from June 1998—was employed at the Carrier's Bellevue Locomotive Shop in Bellevue, Ohio. By letter dated February 16, 2021, Claimant was instructed to report for an investigation:

... to determine your responsibility, if any, in connection with your conduct unbecoming an employee in that you:

1. Falsified your off duty time on the Bellevue Locomotive Overtime Sign In Sheet on February 7<sup>th</sup> and 8<sup>th</sup>, 2021; and/or
2. Made false and/or conflicting statements to Senior General Foreman G. Kerstetter at approximately 0930 AM on February 8, 2021 regarding your overtime hours worked on February 1, 2021.

An investigative hearing was held on March 2, 2021. Senior General Foreman Gregory Kerstetter read into the record a written statement that he had prepared, in which he reported:

On both Sunday, February 7<sup>th</sup> and Monday, February 8<sup>th</sup> 2021 Electrician Jason Trautwein volunteered to work overtime at the Bellevue Locomotive Shop. Mr. Trautwein worked 1<sup>st</sup> shift 7am-3pm both days as part of his normal job assignment. On the overtime sign in sheet he recorded that he worked overtime



from 3 pm-7pm for a total of 4 hours each day. A review of facility camera footage for both days showed Mr. Trautwein leaving the shop in non-work clothes, getting in his vehicle, and leaving at the following times: 2/7/2021 5:53pm (1'07" before 7pm); 2/8/2021 5:51pm (1'09" before 7 pm).

Additionally, Mr. Trautwein reported to me ... on Monday February 8<sup>th</sup> at approximately 930am that he was owed 4 hours of overtime for Monday February 1<sup>st</sup> that was not entered into payroll. I verbally confirmed 4 hours was the time owed from Mr. Trautwein. A review of camera footage for that day again shows Mr. Trautwein leaving before the 4 hour mark. 2/1/2021 6:00pm (1'00" before 7pm).

Mr. Trautwein called me to discuss these incidences on Tuesday February 16<sup>th</sup> 2021 at approximately 4:00 pm. During this conversation Mr. Trautwein claimed that he may have only left a couple minutes early. As the conversation continued he stated that he was unsure of what time he left, that he left when he finished his work and did not follow up with the gang leader. He then stated that he would never do it again and asked if we could work out some other arrangement to make up the time.

By falsifying time on the sign in sheet and making false and/or conflicting statements to a company officer Electrician Jason Trautwein is in violation of the Norfolk Southern General Notice. By repeatedly being dishonest about his time worked, Mr. Trautwein has shown conduct unbecoming an employee at Norfolk Southern.

Kerstetter presented a copy of the overtime sign-in sheet that included February 7 and 8, 2021, showing Claimant's having signed out at 7:00 p.m. Kerstetter also submitted a series of screenshots from video surveillance tapes on February 1, 7 and 8, 2021, showing Claimant leaving the administration building in street clothes, heading to the parking lot, and getting into his personal vehicle at approximately 6:00 p.m. Kerstetter additionally presented the General Notice portion of the Carrier's Operating Rules, which provides in pertinent part: "...Willingness to obey the rules is necessary in order to enter or remain in the service. Past practices not in conformity with the rules are unacceptable as an excuse for noncompliance.... The service demands the honest, intelligent, and courteous discharge of duty...."

Kerstetter testified that he had implemented the overtime sign-in sheet on February 5, 2021, so that he could keep track for payroll without employees having to call, text or email him



to remind him they were owed for overtime. Kerstetter stated that he found it difficult to believe that Claimant did not know that he was leaving an hour early on overtime days and failing to subsequently adjust his time. Kerstetter testified that if another supervisor sent Claimant home early after he performed particular work, and approved pay for Claimant for the full overtime shift, that supervisor was incorrectly handling the tracking of overtime, as was Claimant. Kerstetter opined that it was not credible for Claimant to check payroll and remind Kerstetter he was owed for overtime, but not check payroll to adjust his time to reflect overtime hours actually worked. Kerstetter noted that Claimant had a pattern of leaving one hour early.

Testifying on his own behalf, Claimant stated that he had not failed to adjust his time intentionally. He asserted that he hoped if Kerstetter noticed a time discrepancy, he would bring it to Claimant's attention so that it could be adjusted to reflect Claimant's accurate time worked. According to Claimant, some supervisors would let employees working voluntary overtime leave once their work was done, but pay them for the entire four hours. Claimant denied being intentionally dishonest about his overtime. He stated that because of COVID-19, shifts have been short of employees, and people have been asked to stay to work overtime with no set time for the overtime shift. Employees filled out the overtime sign-in sheet ahead of time and then failed to adjust it because they were not in the habit of using the new sheet yet. Claimant stated: "I'm not trying to steal any company time by any means. 'Cause, you know, an hour of overtime isn't worth getting fired over...." (Car. Ex. A at 17.)

Claimant testified that he usually left around 6:00 p.m. because that was when the shift slowed down from lunch. He denied leaving without telling anyone. Rather, he received approval from the gang leader. Claimant asserted that it also didn't occur to him to adjust his time because "a lot of the times we'd work an hour and they'd pay us for 6 just because we helped them out,



not that I was doing that, but we, I didn't think about the exact minute to minute because they would pay us over, send us home early and still pay you for the full shift...." (Car. Ex. A at 18.)

By letter dated March 12, 2021, Claimant was informed that he had been found guilty of the charges against him, and was dismissed.

### **Contentions of the Parties**

The Carrier contends that the evidence adduced at hearing demonstrated Claimant's guilt. Numerous photographs showed Claimant leaving at approximately 6:00 p.m. on the dates in question. Claimant did not deny failing to adjust the time he claimed on the overtime sheet. Moreover, Claimant was dishonest in telling Senior General Foreman Kerstetter that he was owed four hours of overtime pay for February 1, 2021, when Claimant actually worked only three hours. The Carrier emphasizes that honesty is a fundamental requirement for any employment relationship. Moreover, Claimant's work record was spotty and included a dismissal on July 31, 2018, from which he was reinstated on April 14, 2020. The Carrier argues that Claimant's assertion that his failure to adjust his time was unintentional is self-serving and without merit. The Carrier notes that Claimant did not ask Kerstetter if he could make up the extra time claimed until February 16, 2021: the date the Notice of Investigation was issued. The Carrier submits that dismissal was the appropriate penalty for Claimant's dishonest conduct.

The Organization contends that the Carrier failed to prove Claimant guilty of conduct unbecoming. According to the Organization, Claimant unintentionally overlooked the new policy implemented on February 5, 2021. The Carrier failed to meet its burden of proving that Claimant's actions in not adjusting his time were part of an intentional effort to receive pay for time he had not worked. The Organization further submits that dismissal was unduly harsh and excessive in Claimant's case.



**Opinion**

In the instant matter, Claimant did not deny failing to adjust his time on the overtime sign-in sheet to reflect his having actually left an hour early. Claimant attempted to portray his failures as unintentional and the result of confusion because of the new sheets that Senior General Foreman Kerstetter implemented on February 5, 2021. The Board, however, is unpersuaded by Claimant's version of events.

An employee of Claimant's longevity would surely be aware of the importance the Carrier places on the accurate reporting of time worked and employee honesty in not claiming pay for time not worked. Kerstetter's having established overtime sheets to replace the ad hoc methods by which overtime was being communicated to him, in order to make keeping track of overtime owed easier, did not change any Carrier policy. Rather, the Carrier policy remained what it has always been: employees are expected to report time worked honestly and not claim pay for time not worked. The Board concludes that dismissal was neither a harsh nor an excessive penalty for Claimant's failure to abide by this fundamental expectation. The claim is denied.

**Award:**

The claim is denied.

*Joan Parker*

JOAN PARKER  
Neutral Member

*Jan C. [Signature]*

CARRIER MEMBER

DATED: 08/02/2022

*Tom Owens*

ORGANIZATION MEMBER

DATED: 08/01/2022