

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	<u>AWARD</u>
ELECTRICAL WORKERS	)	
	)	Case No. 174
-and-	)	
	)	Claimant R. Terry
NORFOLK SOUTHERN RAILWAY	)	
COMPANY	)	

STATEMENT OF CLAIM:

“Claim on behalf of Telephone Maintainer Richard Terry in Valdosta, GA, 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 Terry is unjustly withheld from Carrier’s service. We also request his personal record be cleared of the matter.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Following formal investigation held on April 6, 2017, by letter dated May 4, 2017, Carrier Hearing Officer Spicer notified Claimant that he was being dismissed from service, having been found responsible for the following:

1. Conduct unbecoming an employee in that on March 9, 2017, supervision discovered that you used Company vehicle 210210 for personal use on October 18 and 26, 2016; November 23, 2016; December 6, 7 and 15, 2016; and January 17, 18, 19, 24 and 25, 2017, including at times when you were on duty and under pay.
2. Improper performance of duty in connection with the above charge in that on March 9, 2017, supervision discovered that you failed to devote your full attention to duty on October 18 and 26; November 23, 2016; December 6, 7 and 15; and January 17, 18, 19, 24 and 25, 2017.

- 3. Conduct unbecoming an employee and insubordination in that you on March 13, 2017, refused to follow the instructions from your supervisor after being asked to leave the property.**

The transcript of Carrier's formal investigation affords the Board no basis to question Carrier's conclusion. For the most part, the underlying facts are undisputed and fully support Carrier's judgment. In brief, upon initially noticing several questionable entries in Claimant's expense reports relating to the times and locations of meal expenses incurred, Division Manager Kevin McGraw sought additional information from a variety of sources in explanation of the data before him. In that connection, he reviewed Carrier's GPS tracking system—the Telematics Vehicle Location Report—and Claimant Terry was interviewed by his supervisor. A spreadsheet summarizing dates, times and locations of Claimant's Company vehicle indicated various non-work-related residential addresses, including his own, a bank site, restaurants, shopping complexes, Sam's Club, a medical center, a therapist's office, a courthouse, and other non-railroad locations. Hours of Service reports and work logs raised issues concerning the use of Claimant's Company vehicle, the necessity of the travel and entries reflecting Claimant as on duty and being paid for times which were incompatible with his locations.

Upon being interviewed by Supervisor Hepburn, Claimant was offered an opportunity to review the telematics report and respond to questions concerning why he had been at various locations during working hours where no maintenance or repair of NS equipment was required. He insisted that all calls and activities at issue were work-related. Hepburn testified that upon being advised he was being removed from service, Claimant became upset and declined to relinquish his keys for 45 minutes despite repetition of those instructions by Mr. McGraw, NS Labor Relations and the General Chairman of the IBEW over the telephone. At his formal investigation, in attempting to explain the various trips made not in proximity to NS locations Claimant stated simply that, "It was an emotional time the latter part of last year...and I probably made some bad choices."

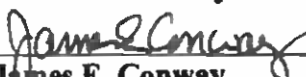
In his defense, the Organization raises several procedural objections. It argues that Claimant was not charged within ten days as mandated by the controlling MOA requiring notification to attend a formal hearing be issued within ten days from date of occurrence or first knowledge thereof. As this Board has repeatedly found, strict compliance with


applicable time limits is of critical importance in disciplinary matters. In this instance, however, the record reflects that Carrier complied with governing rules, having charged Claimant on March 15, 2017, within ten days of the March 9 date McGraw, the Carrier official authorized to administer discipline, received conclusive documentary information confirming Claimant’s activities in the completed telematics report. Accordingly, Claimant in this instance was charged on a timely basis. With respect to the Organization’s well-argued assertions alleging Claimant was deprived of a fair hearing in the face of the Organization’s inability to cross-examine witnesses who prepared the GPS data, the contention appears to lose its vigor in the face of the Grievant’s admission of wrongdoing.

Claimant, whose work required him to operate with limited supervision, plainly engaged in conduct unbecoming an employee in repeatedly using a Company vehicle for personal use while on duty and being paid. At no time prior to being confronted did he mention any personal issues interfering with work performance or seek to utilize FMLA leave time. He further declined to follow instructions from supervision in failing to leave the property as directed. The totality of that conduct in our judgment constituted just cause for dismissal.

A W A R D

The Claim is denied. Claimant was dismissed for just cause.

  
James E. Conway  
Chairman and Neutral Member

  
Christopher Carr  
Carrier Member

  
Tom Owens  
Employee Member

Dated: January 4, 2019