

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332**

Parties to Dispute:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

-and-

**NORFOLK SOUTHERN RAILWAY
COMPANY**

AWARD

Case No. 163

Claimant J. W. Reinwald

STATEMENT OF CLAIM:

"Claim on behalf of Electrician J. W. Reinwald to be reinstated to service and to be made whole after being dismissed by letter dated June 30, 2016 in connection with the following:

- 1. Your being tardy to work for your assignment as an electrician on the third shift (11:00 PM – 7:00 AM) on June 2, 2016, at the Roundhouse, Fort Wayne, Indiana, in that you reported to work at approximately 11:15 PM on June 2, 2016, in violation of General Safety Rule 919 of the Norfolk southern Book of Safety and General Conduct rules.**
- 2. Your conduct unbecoming an employee when you falsified the Daily Safety Sign-Up Sheet dated June 2, 2016, in that you indicated "2300" as your "TIME IN" on June 2, 2016 while assigned as an electrician on the third shift (11:00 PM-7:00 AM) at the roundhouse, Fort Wayne, Indiana.**
- 3. Your conduct unbecoming an employee by making a false statement with respect to matters under investigation when, upon being asked at approximately 11:05 PM on June 5, 2016, by Senior General Foreman Charles Pounds what time you arrived at work on June 2, 2016, you replied you had arrived at work "before 11:00PM" while assigned as an electrician on the third shift (11:00 P-7:00 AM) at the roundhouse, Fort Wayne, Indiana."**

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.

The dispute before the Board is a sad reminder of the bad places to which poor judgments can lead. The record provided for our review informs us that Claimant Reinwald, in Carrier's service since July 2006, was scheduled to be on duty as an Electrician at the Roundhouse in Fort Wayne, IN at 11:00 PM on June 2, 2016. In the course of making routine checks on second and third shift employees that day, Senior General Foreman C. Pounds and General Foreman D. Cissell reported that they observed Claimant arriving on the Company property in his red Chevy pickup at 11:15 PM, late for his shift. Examination of the Daily Safety Sign-Up Sheet for that day, however, reflected Claimant as having signed in at 11:00 PM.

Upon being questioned that evening by Cissell, Pounds and Supervisory Special Agent A. Head about the discrepancy between actual arrival time and sign-in time, Claimant represented that he had arrived at 11:00 PM and was sure of his facts, having actually arrived before 11:00 PM. Informed that both Cissell and Pounds had seen Claimant arrive on the property at 11:15 PM, park his vehicle on the west side of the Roundhouse Office and enter the building through the south entrance, Claimant served up a string of profane maledictions as he emptied his locker and was removed from service pending further investigation.

A formal investigation was held on June 16, 2016, with Claimant in attendance together with his duly authorized representatives. Following review of the evidence adduced, by letter dated June 30 2106, Carrier dismissed Mr. Reinwald from service. This claim ensued and is now properly before the Board for final determination.

The Organization sponsors several arguments in defense of Claimant. As an initial matter it points to its review of the sign-in sheet, which indicates that Electrician C. A. Brock, who was working the same shift, had signed in after Claimant. That, it maintains, establishes that Claimant arrived before 11:00 PM on the date in question. Secondly, it argues that the dismissal penalty was unduly harsh and excessive under the circumstances.

Because the Board sees the forensics of record pointing in another direction, we must respectfully reject both assertions. First, regarding the timing of sign-ins, according to the un rebutted testimony of Mr. Brock, as Gang Leader he had conducted the nightly safety meeting that evening, regularly held during the first fifteen minutes after shift starting

time. Brock testified without contradiction that Mr. Reinwald was not present for that meeting. Claimant maintains that he was in the picnic table area during the safety meeting taking it in on a computer, but was unable to state why he had chosen not to attend the meeting.

Unquestionably, Claimant's name appears above Brock's on the sign-in sheet. There is, however, no record support for the proposition that the sign-in sheet recorded accurate sign-in times—and some to suggest it did not. While Claimant's signature in fact appeared above Brock's, every signature on the page denotes a sign-in at precisely shift starting time, raising reasonable questions about the accuracy of the times denoted. Nor does the sheet conclusively establish the order in which personnel arrive at work. Brock was Gang Leader that night, scheduled to do both pre-shift observation checks and conduct the safety meeting at 11:00 AM. He accomplished both of those tasks, clearly signaling that he had arrived on property, signed in on a blank line on the sheet and taken up his observation position prior to Claimant's arrival, and was back in the Gang Leader's office at the west end of the building by the 11:00 PM shift start time. In light of those realities, and notwithstanding the lack of clarifying testimony by Brock, Carrier's contention that he signed mid-page upon arriving at the Roundhouse earlier in the evening enjoys the force of logic and is an argument more easily squared with other reliable record evidence than that sponsored by Claimant.

Beyond insisting that he had reported on time, Claimant denies ever stating he had arrived prior to 11:00 PM. He additionally emphasizes his work ethic and the respect he enjoys among many of his co-workers, except for one specific employee,

“who had made comments to coworkers trying to say that he doesn't see me at shift change...[a]nd has told supervision that I'm difficult to work with and I feel like he's had an agenda towards me and supervision has taken that position also.”

Claimant additionally concedes making the comments attributed to him by supervision upon being removed from service, including, in addition to other purple prose, references to his supervisors as “a bunch of fucking weasels,” explaining that he was very upset and that such language was not uncommon in Fort Wayne Mechanical.

OPINION AND AWARD

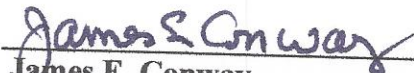
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Based upon a careful review of the record in its entirety, the Board is persuaded that Carrier has produced substantial credible evidence of record in support of its charges that Claimant was responsible for late reporting; falsification of reporting times related to that report; providing untruthful responses to supervision upon being questions about the incident; and engaging in unacceptable, discourteous and offensive behavior toward Carrier officer upon being removed from service far outside the boundaries of "shop talk." Carrier's applicable Rules require "honest, intelligent and courteous discharge of duty." Claimant in this instance is shown to have been dishonest, discourteous and offensive. He argues that he was signaled out, but offers no proof in support of that assertion.

In the face of Claimant's inability to establish any effective affirmative defense rebutting Carrier's contentions and bolstering his own, it is manifestly improper for this Board to substitute its judgment for that of Carrier with respect to the appropriate level of discipline assesse under the circumstances presented.

A W A R D

The Claim is denied.


James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Carr
Carrier Member

Dated: February---, 2018