

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40972
Docket No. MW-41134
11-3-NRAB-00003-090511**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Montana Rail Link, Inc.**

STATEMENT OF CLAIM:

“Claim on behalf of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. S. Stringer by letter dated January 12, 2009, which followed a fact-finding session on December 30, 2008 concerning his alleged violations of Montana Rail Link General Code of Operating Rules 1.6(4) and 1.15 and General Safety Rule G-1 1(f) in connection with the December 15, 2008 charges in which the Carrier alleged ‘*** you allegedly left work early without authority on December 9, 2008, and the time that you allegedly submitted to the Montana Rail Link payroll Powertrack system for December 9, 2008, did not accurately reflect actual time spent in the service of Montana Rail Link as well as on December 10, 2009, (sic) when you were allegedly conducting personal business while in the service of Montana Rail Link without permission from a supervisor.’ was unreasonable, excessive and in violation of the Agreement (System File MRL-235-M).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant S. Stringer shall now ‘. . . be returned to service and his record be cleared of the charges and proceedings of this fact-finding. We further request that Mr. Stringer be made whole for any loss of wages, loss of overtime, and fringe**

benefits, including but not limited to, insurance, railroad retirement credit, flex time, etc.’”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was dismissed for the Rule violations noted in the Statement of Claim. At the time of the incidents, the Claimant had more than 11 years of service with the Carrier. His prior record contained eight disciplinary entries, six of which occurred in the four and one-half years before the current incidents arose. The prior discipline included three censures, two five-day suspensions, one 15-day suspension, one 30-day suspension, and a prior dismissal on July 23, 2004.

Our review of the record of claim handling does not reveal any surviving procedural objections that require disposition by the Board. One comment is in order, however. While it is true that a copy machine error caused the omission of page 40 of the transcript when it was sent to the Organization, the page was supplied as soon as the error was brought to the Carrier’s attention. In addition, from reading the context on page 39, the immediately preceding page, it is clear that all of the testimony that comprised the evidentiary portion of the Investigation had been completed. Accordingly, the transcript was a complete and accurate copy of the evidence adduced at the Investigation.

The record does not establish any significant conflicts in the basic facts leading to the charges. Indeed, the Claimant admitted he left his assignment two

hours early without proper authority on December 9, 2008. By his testimony, he departed at approximately 2:05 P.M. that day without asking permission to do so. According to a payroll audit report, the Claimant key entered his work time into the payroll system at 2:02 P.M., just minutes before he left early. The data he input showed he worked until his scheduled off-duty time of 4:00 P.M. His entry over-claimed his work time by two hours. According to his closing statement, the Claimant knew the entry was incorrect, but he did not change it at the time because he was in a hurry to leave the work premises. He said he recalled the error the next morning but did nothing at the time to make a correction. His supervisor learned of the Claimant's early departure in conversation with another employee who alerted the supervisor to the fact that the Claimant left early but claimed full work time in the payroll system. The supervisor questioned the Claimant about the discrepancy the following day on the afternoon of December 10. The Claimant admitted the error. Within minutes of that discussion, the Claimant used his cell phone to have his inaccurate payroll entry corrected.

It is also undisputed that the supervisor observed the Claimant using a Carrier vehicle off of the Carrier's property to conduct personal business on the afternoon of December 10. Once again, the Claimant had done so without obtaining proper authority to do so. The Claimant had also taken his co-worker with him while he ran the errand.

Given the state of the record noted above, we find that the record does contain substantial evidence to support the Carrier's determination that the Claimant violated the Rules with which he was charged. In light of his prior discipline record, the Carrier's disciplinary decision is not found to be harsh, excessive, or unreasonable.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 14th day of April 2011.