

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42892
Docket No. MW-43663
18-3-NRAB-00003-160440**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division –
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Keolis Commuter Services, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Claimant P. Boudreau by letter dated September 4, 2015, when he allegedly falsified time cards and allegedly used the FMLA code after being told by his manager not to, was without just and sufficient cause and in violation of the Agreement (Carrier’s File BMW 12-2015 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Boudreau shall be reinstated to service, have the discipline removed from his record and shall be allowed all losses as a result of the Carrier’s improper discipline.”**

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.

By notice dated July 14, 2015, the Claimant was directed to attend a formal Hearing on charges that the Claimant allegedly had falsified time cards and had utilized the FMLA code on July 29, 2015, without proper authorization and after his manager specifically told the Claimant that he did not have permission to use this code. The Investigation was conducted, after two postponements, on August 28, 2015. By letter dated September 4, 2015, the Claimant was notified that as a result of the hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence conclusively establishes that the Claimant is guilty as charged, because there are no grounds for reducing or otherwise altering the discipline imposed, and because the discipline assessed was appropriate under all of the relevant circumstances. The Organization contends that the instant claim should be sustained in its entirety because the Carrier has failed to meet its burden of proving that the Claimant was guilty as charged, because the Carrier's arguments are disingenuous and without merit, and because the Carrier failed to show that the discipline imposed was appropriate.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating the Carrier's attendance rules, as well as failing to follow direct orders when he repeatedly falsified his time card by claiming approval for FMLA leave when he had no such approved leave. The Claimant was excessively absent and insubordinate.

The record reveals that between March 13, 2015, and July 21, 2015, the Claimant accumulated an extensive list of dates of absenteeism. On twelve of those occasions, he stated that he was out on FMLA leave. However, the Claimant had never been approved for FMLA. The Claimant's actions violated numerous rules with respect to the Attendance Policy and dishonesty.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was a very short-term employee. He simply could not come to work and he was not honest about the entire matter. Given that poor disciplinary record, coupled with the Claimant's relatively short-term employment, this Board cannot find that the Carrier's action in terminating the Claimant was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD

Claim denied.

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 10th day of January 2018.