

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43331  
Docket No. MW-44193  
19-3-NRAB-00003-170306**

**The Third Division consisted of the regular members and in addition Referee Mark Burdette when award was rendered.**

**(Brotherhood of Maintenance of Way Employees<sup>1</sup> Division -  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**  
**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed on Mr. T. Libby by letter dated June 17, 2016 for alleged violation of Pan Am Safety Rules PGR-N, PGR-L, PGR-C and PGR-A was on the basis of unproven charges, excessive and in violation of the Agreement (Carrier's File MW-16-07 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Libby shall be reinstated to service with seniority and all other benefits and rights unimpaired, have his record cleared of the charges leveled against him and be compensated all losses incurred (straight time and overtime) until he is returned to work.”**

**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.**

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<sup>1</sup> The Brotherhood's name is as stated, and their documents consistently use the form “employees” rather than the currently accepted “employees”.

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

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

Claimant Travis Libby has an established seniority date of July 7, 2008. During his approximately eleven (11) years of employment with the Carrier, he has established and retained seniority within the Maintenance of Way Department. At the time of this dispute, he was regularly assigned as a Track Foreman.

The Carrier's Director of Safety, D. Nagy was called upon to Investigate alleged theft of time by employees working in the Rumford Yard. Director Nagy dispatched Officer Fowler of the Boston and Maine Railroad Police to Investigate the employees at the Rumford Yard. Officer Fowler conducted this Investigation on April 13, 18, 19, 22, and May 6, 2016 at the Rumford Yard. Officer Fowler reported back to Director Nagy when the employees in the Rumford Yard were arriving and leaving the job site. Director Nagy then cross referenced those times to the employees' time sheets and determined that there were discrepancies between Officer Fowler's recorded time and the Claimant's time as reported on his time sheet.

Director Nagy went to the Rumford Yard on May 6, 2016 and removed the Claimant from service pending an Investigation into allegations that he was claiming time in excess of actual hours worked.

The Claimant was notified by letter dated May 9, 2016 to attend a formal Investigation, and charging him with a violation of Safety Rules PGR-N, PGR-L, PGR-C, and PGR-A. The Claimant was suspended pending the hearing.

The hearing, following a postponement, was held on June 7, 2016. By letter dated June 17, 2016, the Claimant was notified of the following:

**"Violation of Pan Am Safety Rules; PGR-N, PGR-L, PGR-C and PGR-A.**

Specifically, on May 6, 2016, while you were acting as Foreman on the I&R Crew #3544, you were taken out of service pending a hearing when it was discovered on April 27, 2016, that time entered by you on

your time sheet for the dates of 4/18, 4/19, & 4/22, allegedly reflect in excess of your actual hours worked. Additionally, on 5/06, the time sheet that you filled out was also allegedly in excess of your actual hours worked.

This letter will serve to inform you that you have been found guilty of these charges and as a result you are hereby terminated from the employment of the Pan Am Railways Co. immediately.”

The relevant Contract provisions are:

**“Article 9. Beginning and Ending Day/Hours of Service**

- 9.1 Employees' time will commence at the time they report for duty at their headquarters, except Production Crews, and shall continue until they are relieved from duty by the Carrier.”**

\* \* \*

**“Article 26. Discipline**

- 26.1 No employee will be disciplined without a fair hearing. The notice of hearing will be mailed to the employee within 14 days of the Carrier's first knowledge of the act or occurrence. The notice of hearing will contain information sufficient to apprise the employee of the act or occurrence to be Investigated. Such information will include date, time location, assignment, and occupation of employee at the time of the incident. The notice of hearing will also include a list of witnesses to be called. The hearing will be scheduled to take place on a regularly scheduled work day within 30 days of the Carrier's first knowledge of the act or occurrence. The hearing may be postponed by either party due to sickness, injury, or vacation of principals or witnesses. The hearing may be postponed for other reasons by mutual consent of the parties. The hearing may be adjourned to secure necessary witnesses or if it cannot be completed in a day. Hearings will be held at one of the**

following locations, whichever is closest to the employee's headquarter point - Waterville, Rigby, No. Billerica, East Deerfield. Employees required to attend a hearing at a location other than the location closest to the headquarter point will be allowed Personal Auto Expense payment from the location closest to the headquarter point to the location where the hearing is held and return.

- 26.2 An employee may not be suspended pending a hearing except when the act or occurrence to be Investigated is of a serious nature such as Rule G, insubordination, extreme negligence, dishonesty, or when continuing an employee in service may constitute a threat to Carrier personnel, carrier property, or property entrusted to the custody of the Carrier. Suspension pending a hearing will not be considered as prejudicial to the employee and will be used sparingly by the Carrier.

\* \* \*

- 26.4 The Employee must be notified within fifteen (15) days of the completion of the hearing if discipline will be assessed. The employee and the General Chairman will be provided with a copy of the hearing transcript at the time the discipline decision is rendered. The types of discipline which may be assessed are reprimand, disqualification, deferred suspension, relevant training, actual suspension, and dismissal. The types of discipline may be assessed individually or in combination. The employee will be required to serve deferred suspension only if he commits another offense for which discipline is imposed within the succeeding six (6) months period.

- 26.5 If the finding of the hearing is that the employee is not at fault, he will be compensated for the actual wages lost, if any. If no wages are lost, employee will be paid in accordance with Article 38 of this Agreement.”

**Rule 37.1**

**“Unless otherwise provided, time of employees will start and end at their advertised Headquarters.”**

**Pan Am Railways Safety Rules**

**PGR-A Safety is of the first importance in the discharge of duty. Obedience to the rules is essential to safety and to remain in service.**

**PGR-C Employees must devote themselves exclusively to the Company's service while on duty. They must cooperate and assist in carrying out the rules and instructions, and must promptly report to the proper officer any violation of the rules or instructions, any condition or practice which may imperil the safety of trains, passengers or employees, and any misconduct or negligence affecting the interest of the Company.**

**\* \* \***

**Any act of insubordination, hostility or willful disregard of the Company's interests will not be condoned and is sufficient cause for dismissal.**

**\* \* \***

**PGR-L Employees who are dishonest, immoral, vicious, quarrelsome. and uncivil in deportment or who are careless of the safety to themselves or of others will not be retained in the service.**

**\* \* \***

**PG R-N Employees must report for duty at the prescribed place and time and be ready to work. If subject to call they must not**

absent themselves from their usual calling place without giving notice to those required to call them.

\* \* \*

No time or wages are to be entered on time slips or payroll forms except for work actually performed by the person whose name appears thereon. Time slips or payroll forms must be filled out completely and accurately. Any time slips or payroll forms improperly entered is sufficient cause for dismissal.

The Claimant, Travis Libby's bulleting hours were 7:00 AM to 3:00 PM, Monday through Friday. Employees are responsible for filling out their own time sheets, signing, and submitting to their supervisor.

Claimant Libby's Headquarter point as identified on his Award sheet was Riley's, Maine. The Claimant's time sheets for the period in question reflected "Rumsford" at the top, indicating his report point. There was no evidence of a written directive for employees to report to Rumsford, rather than the Award indicated headquarters point – Riley's. However, the testimony at the initial hearing was that all employees on the crew knew to report to Rumsford, and did, not Riley's.

Claimant Libby's time sheets show the following:

April 18, 2016	8 hours
April 19, 2016	8 hours
April 22, 2016	8 hours
May 6, 2016	5 hours

Claimant Libby was observed by Officer Fowler arriving at work at Rumsford as follows:

April 18, 2016	7:26 AM
April 19, 2016	7:18 AM
April 22, 2016	7:28 AM
May 6, 2016	7:25 AM (observed by Director Nagy)

Claimant Libby asserts that his arrival at Rumsford followed his timely report to Riley's. Further, his report to Riley's was required in accordance with the contract because it was his designated Headquarters. However, Libby was unable to provide any substantiating evidence that he actually reported to Riley's on the dates in question. None of the other members of the crew testified that they reported to Riley's. There was no reason for him to report to Riley's – his company truck was stationed at Rumsford. He did not claim mileage for the use of his personal vehicle between Riley's and Rumsford, as he would have been permitted and expected to do under the Carrier policies. The normal driving time between the two points is approximately 30 minutes, so he would have to be leaving Riley's prior to 7:00 AM in order to report to Rumsford at the observed and recorded times. While the Company has the burden of supporting the charges preferred against the Claimant, once the Claimant asserts a defense, the burden shifts to the Claimant to adequately support the defense raised. The Claimant failed to prove the asserted defense. Therefore, we conclude that his testimony is self-serving and not sufficiently probative to exonerate him from the charge of stealing time.

The Brotherhood asserts that Libby was denied due process, and therefore the charges against him should be dropped. They assert multiple issues with the preparation and conduct of the initial hearing, including:

- The Carrier's failure to provide documentation in advance of the hearing
- The suspension of the Claimant pending the hearing, in violation of Article 26.2
- The deportment of the Hearing Officer, Charging Officer, and Carrier witnesses during the hearing created an environment unconducive to a fair hearing
- The Carrier's witnesses were hostile and not credible to support charges against the Claimant
- The Carrier's Investigation was not timely per Article 26.1 since it commenced on April 13, 2016.

While there is merit to some of the Brotherhood's allegations, they are not so egregious as to support a denial of due process sufficient to void the serious charge of stealing time. The Carrier did arguably violate Article 26.2 by suspending the

Claimant in advance of the hearing. While he was dishonest, the intent of that provision is to remove an employee who may be a danger to Carrier equipment or employees pending a hearing. Those elements are not present in this case. Further, at least one other employee similarly situated was not suspended pending hearing, creating a disparate treatment argument. Other elements of the Brotherhood's allegation, including the deportment of the Hearing Officer, Charging Officer, and Carrier witnesses are also evident in the transcript, but again are not sufficient to support a lack of due process sufficient to void the serious charges against the Claimant.

The Carrier has also 'stretched' in charging the Claimant with multiple rule violations, some of which are marginally supported, if at all, by the evidence presented in the hearing. For example, the record does not support a violation of PGR-A, which was included in the discharging instrument. Such action normally could mitigate the penalty assessed. However, in this case, it does not due to the serious nature of the offense.

Stealing time is one of the most egregious offenses that an employee can commit against an employer, and therefore warrants the most significant disciplinary action – termination. The Carrier has sufficiently supported the charge against Claimant Libby, notwithstanding the challenges by the Brotherhood.

**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 December 2018.**