

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43339
Docket No. MW-44553
19-3-NRAB-00003-170729**

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

**(Brotherhood of Maintenance of Way Employees 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. C. Tirone by letter dated January 12, 2017 in connection with alleged charges that ' ... time entered by you on your time sheet for Monday, November 14, 2016, allegedly reflected in excess of your actual hours worked was on the basis of unproven charges and excessive (Carrier's File MW-17-01 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Tirone shall be reinstated to service and he shall be made whole for any loss of pay, including overtime and any benefit loss he may have incurred.”**

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.

Claimant Christopher Tirone has established and holds seniority under the Maintenance of Way Agreement and had approximately twenty (20) years of service with the Carrier and was assigned as a trackman prior to the rise of this dispute.

On November 21, 2016, the Claimant was assigned and working as an I&R Trackman when he allegedly submitted a time sheet that reflected in excess of his actual hours worked. By letter dated December 15, 2016, the Carrier directed the Claimant to attend a formal investigative hearing regarding his purported miscalculation of hours worked. After one (1) postponement, the hearing was held on January 6, 2017 and by letter dated January 12, 2017 the Claimant was issued the ultimate form of discipline and was immediately terminated from employment with the Carrier. By letter dated February 12, 2017 the Organization appealed the Carrier's discipline and requested that the Claimant be reinstated and compensated for any loss of pay, including overtime and any benefit loss he may have incurred.

Relevant Contract Provisions

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.

* * *

26.5 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.

* * *

26.7 If the Carrier's discipline decision is modified or overturned at any stage of handling resulting in a payment to the employee, such payment may be offset by any earnings received by the employee during the relevant time period which would not have otherwise been earned but for the discipline. The Carrier will work with the appropriate government agencies to assure that no Railroad Retirement benefits are adversely affected by the operation of the above provision.

On November 22, 2016, the Carrier issued a notice of hearing to the Claimant, which states in pertinent part:

“This Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident(s) outlined below:

Specifically, on Monday, November 21, 2016, while you were acting as Trackman on the I&R Crew #5449, you were taken out of service pending a hearing when it was discovered that time entered by you on your time sheet for Monday, November 14, 2016, allegedly reflected in excess of your actual hours worked.”

The hearing was held on January 6, 2017. During the hearing, it was established that Mr. Tirone's on-duty time was 0700 to 1500. In the process of reviewing his time sheet for November 14, Mr. Gerossie noticed that Mr. Tirone had put in an hour of overtime. Gerossie recalled that he had been in North Adams that day, and observed Mr. Tirone in the office just after 3:00 PM. Gerossie then checked to see if Tirone had started early on that date – which he had not. He thus determined that there was an hour of erroneous overtime put in for that day. The crew that he was working with on that day completed their work at 1420, substantiated by the fact that the Form D was cancelled at 1432, indicating that the job was done and everyone had left the area. Travel time from the work location to North Adams was normally approximately 15 minutes, putting Tirone back at no later than 10 minutes to three. Mr. Keenan, Tirone's supervisor, testified at the hearing that during the discussion he had with Tirone, Tirone claimed he stayed late working with the crew, cleaning up, and that justified the hour. The remainder of the crew Tirone was working with accurately put in for 30 minutes of overtime, as, after completing the assignment, they had approximately an hour to return to Mechanicville. Subsequently, Tirone stated that the hour of overtime claimed was a mistake as a result of filling in his time sheet at the end of the week from memory. The hour of overtime was not paid, because Gerossie corrected it before it went to payroll.

On January 12, 2017, the Claimant was issued notice that he was dismissed from service with the Carrier.

On February 12, 2017, the Organization appealed the discipline issued in this case.

Claimant Christopher Tirone was a 20 year employee, and had a work record which revealed numerous incidents of progressively greater disciplinary suspensions, for vehicular accidents and for operating equipment with an expired DOT Medical card. He was charged with "stealing time". It is clear from the evidence and testimony in his two different explanations that the charge was appropriate and substantiated by the Carrier.

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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 14th day of December 2018.