

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43410
Docket No. MW-44815
19-3-NRAB-00003-180224**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when the 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 [thirty (30) working day suspension] imposed upon Mr. G. Harrigan by letter dated March 31, 2017 was excessive, unwarranted and on the basis of unproven charges (Carrier’s File BMW 02/2017 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant G. Harrigan’s record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including over time and for all benefit loss suffered.”**

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 February 17, 2017, the Claimant was directed to attend a formal investigation at which he was charged as follows:

“Development of the facts and determination of your responsibility, if any, as a result of an alleged incident that occurred on February 7, 2017. At that time, you were the I&R Foreman assigned to the Dorchester Branch. At approximately 11:44 a.m. you were instructed by your supervisor, Ms. Handrahan, to assist with the salting and scraping of platforms on the Dorchester Branch. At that time, you stated to Ms. Handrahan that you were in Pawtucket, Rhode Island. GPS records indicate that you were actually at the T-Pad in Somerville, MA between approximately 11:15 a.m. and 11:52 a.m.

It is further alleged that after being instructed to meet a crew on the Dorchester Branch to assist with cleaning station platforms, you proceeded from the T-Pad to South Station for no legitimate business purpose between approximately 12:59 p.m. and 1:32 p.m.

This alleged behavior hampered Keolis’ ability to meet higher passenger demands due to the Patriots Victory Parade, its contract obligations with the MBTA, and shows neglect of you attending to your duties.”

Following two postponements at the request of the Organization, the investigation was conducted on March 24, 2017. By letter dated March 31, 2017, the Claimant was assessed a thirty working day suspension.

Our review of the record of the investigation shows that the Carrier had substantial evidence to support its charge against the Claimant. It is evident that the combination of bad weather and heavy passenger demands required the Carrier to direct the Claimant to perform work on the Dorchester Branch, which is part of his assigned territory. This work was necessary to ensure passenger safety. Not only did he not perform this work, he provided misleading information to his supervisor as to why the work could not be performed by him. Instead of being where he was supposed to be, it is evident he was in the vicinity of South Station, which happened to be near the Patriots’ parade route.

While the Organization has argued that the discipline imposed was excessive, the Carrier contends the Claimant's conduct constituted insubordination and failure to perform his duties, and could have resulted in his dismissal. It submits that the 30-day suspension was lenient under the circumstances.

We do not find that the discipline issued to Claimant was disproportionate to the seriousness of his offense. We have no basis for modifying it.

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 18th day of January 2019.