

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43452  
Docket No. MW-44369  
19-3-NRAB-00003-170475**

**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 Mr. M. Blythe by letter dated August 22, 2016 for alleged failure to report for duty on May 11, 2015 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File BMW 14/2016 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Blythe shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and shall be compensated for all lost wages and benefits.”**

**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 May 9, 2016, the Claimant was directed to attend a formal investigation and hearing on charges that he allegedly had been AWOL on May 7, 2016. The investigation was conducted, after three postponements, on August 12, 2016. By letter dated August 22, 2016, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and that he was being dismissed from the Carrier's service. The Organization subsequently filed the instant claim on behalf of the Claimant, 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 undisputed evidence establishes that the Claimant was guilty as charged, because the Carrier followed its Attendance Policy to the letter, because there is no merit to the Organization's arguments, and because the discipline imposed was entirely justified. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proof, and because the Carrier has failed to show that any discipline was appropriate.**

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

**The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient in the record to support the finding that the Claimant was guilty of violating the Carrier's Code of Conduct Rules 4, 8(c), and 17, as well as the Carrier's Attendance Policy. The record reveals that the Claimant was on his fourth step in the Attendance Policy, having incurred three prior violations in the last two years. The Claimant then was AWOL on May 7, 2016, which was his fourth attendance infraction during that short period of time. And then on November 7, 2014, the Claimant was again AWOL. The Claimant had executed other waivers on those two occasions, as well as on April 11, 2016, for another AWOL. The record reveals that the Carrier has a five-step attendance plan which calls for increasingly progressive discipline and then, on the fifth step, dismissal.**

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. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimant was offered all of the progressive discipline steps provided by the Carrier, including a few extras. Given the previous leniency and the seriousness of the Claimant's continual failure to show up for work, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment on this last occasion. Therefore, this 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 1st day of March 2019.