

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 43456  
Docket No. MW-44445  
19-3-NRAB-00003-170560

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

(Brotherhood of Maintenance of Way Employes 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 [four (4) working day suspension] imposed upon Mr. T. Saint Louis for alleged violation of ‘... Code of Conduct Rule 1 - Knowledge of the Rules, Rule 8 B Behavioral Expectations for Keolis CS Employees, Rule 9 B Safety, Rule 10 B Industrial Accident and Rule 17 B Attending to Duties \*\*\*’ following an investigation held on September 23, 2016 was on the basis of unproven charges and in violation of the Agreement (Carrier’s File BMW 17/2016 KLS).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Saint Louis shall >... be immediately made whole with his record and seniority unimpaired, including compensation for all loss of wages and benefits 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.**

**By notice dated May 24, 2016, the Claimant was directed to attend a formal investigation and hearing on charges that he allegedly had failed to immediately report an injury on May 20, 2016. The investigation was conducted, after a postponement, on September 23, 2016. By letter dated October 4, 2016, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and that he was being assessed a four-day actual suspension. 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 the Claimant received a fair and impartial hearing, because substantial evidence establishes that the Claimant was guilty as charged, because the Carrier reasonably focuses on safety, because there is no evidence of mitigating circumstances, and because the discipline imposed was appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier inaccurately informed the Claimant of the charges against him, because the Carrier failed to meet its burden of proof, because there is no merit to the Carrier's defenses, and because the discipline imposed was unwarranted and excessive.**

**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 the Carrier has failed to meet its burden of proof that the Claimant was guilty of violating any Carrier rules for his actions in May of 2016. The Carrier charged the Claimant with failing to immediately report his injury that took place on May 21, 2016. May 21, 2016, was a Saturday, and the Claimant was performing his duties on overtime and his accident related to a welding issue that he was performing that day. The Claimant's supervisor, Roadmaster Smith, was not available nor was he on duty on that overtime Saturday. The Claimant reported his alleged injury on Monday, May 23, 2016, to his supervisor. Carrier Rule of Conduct Section 4.2 states that employees must "immediately report all injuries and illnesses to their supervisor."**

That section does not provide the Claimant any direction to contact persons other than his supervisor when he became injured. The Claimant properly notified his supervisor of the alleged injury on his first available opportunity, which was Monday morning, two days after the incident.

It is fundamental that the Carrier bears the burden of proof in all discipline cases. In this case, the Carrier has failed to meet that burden and, therefore, this claim must be sustained.

**AWARD**

Claim sustained.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 1st day of March 2019.