

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43840  
Docket No. MS-45182  
19-3-NRAB-00003-180737**

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

**PARTIES TO DISPUTE: (Sadat Hasan  
(Northeast Illinois Regional Commuter Railroad  
(Corporation (METRA)**

**STATEMENT OF CLAIM:**

**“Claim on behalf of Sadat Hasan for payment of all lost time and his return to service with all vacation and seniority rights unimpaired and all notations removed from his personal work record on account of dismissal issued following the investigation held on August 4, 2017. Claim to include all wage equivalents to which he is entitled with all medical, surgical, dental and life benefits. Claim also to include for monetary loss on account of not having such coverage while dismissed from service. Included in this claim are credits for railroad retirement payment for each month of lost time and Carrier’s TCU Pension contributions lost as a result of the dismissal.”**

**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.**

At the time of this incident, Clerk Sadat Hasan (Claimant) had twenty-eight (28) years of service with the Carrier. In August 2016 he was assigned to work as a Ticket Sales Clerk at the Carrier's Orland Park Station. His work hours were Monday through Friday, 5:00 AM to 1:00 PM. On August 24, 2016, District Manager Lisa Gibson reviewed time keeping records for the previous week and noticed that on Friday, August 19<sup>th</sup>, the Claimant had swiped out of the time keeping system but failed to swipe in that day at the beginning of his shift. Gibson contacted the Claimant and he admitted to reporting to work fifteen (15) minutes late. He failed to notify management he was late. Gibson also accessed a "late till report" to determine when the Claimant began ticket sales for the day and learned he opened his register almost thirty (30) minutes late.

By letter dated August 26, 2016, the Claimant was directed to attend an Investigation scheduled for August 31<sup>st</sup> to determine the facts regarding the following charge:

"The purpose of this investigation is to develop the facts, determine the cause and assess responsibility, if any, in connection with your alleged failure to properly protect your assignment on Friday, August 19, 2016, when you failed to notify your supervisor you were more than 27 minutes late opening your register and till. You are scheduled to work at the Orland Park Ticket Office, Mon-Fri 5:00 am. – 1:00 p.m. with Sat-Sun rest days."

The scheduled hearing was scheduled, postponed and rescheduled eight times over the course of the following year. The hearing was eventually held on August 4, 2017. The night before this final hearing date, the Claimant alerted the Organization representative via text message that he was being admitted to the hospital and would not be able to attend the hearing. The Carrier held the hearing without the Claimant present.

By letter dated August 10, 2017, the Claimant was notified he had been found culpable of violating Customer and Station Services Bulletin Notices issued February 1, 2016: Bulletin #1 – Metra's Employee Conduct Rules, Item II-General Notice, Paragraph 2, 3; Item III-General Rules, Rule B, Paragraph 1; Rule Q, Paragraph 1; Bulletin Notice #5, Item 2-Rules, paragraph 1 and Item A. Bulletin #10-Station & Ticket Office Security Guidelines, Item No. 7, Paragraph B, Items 1 & 2. As a result the Claimant was dismissed from service.

The Organization filed an appeal on behalf of the Claimant and this matter was processed on property in accordance with the parties' collective bargaining agreement. According to the Claimant, the Organization notified him sometime after the final denial letter from the Carrier (November 22, 2017) they would not process his appeal any further. On August 15, 2018, the Claimant wrote to the National Railroad Adjustment Board notifying of his intent to file a submission covering an unadjusted dispute. This matter is now properly before this Board for final adjudication.

The Carrier argues the evidence of record establishes the Claimant failed to properly protect his assignment when he was more than twenty-seven (27) minutes late reporting to work and opening his register on August 19, 2016. His actions, they assert, violate Carrier Rules and Guidelines as listed in the August 26, 2016 charge letter. The Claimant admitted he was late when questioned by his supervisor, despite the fact that he later denied arriving late.

The Carrier asserts it had no obligation to cancel or postpone the Investigation hearing yet again despite the Organization representative's request. The Claimant failed to contact the Carrier, nor did he provide documentation in support of his alleged admission to the hospital. The Carrier cites First Division Award 27592 on its property in support in which Referee W. Miller wrote in pertinent part (emphasis added):

**"...the carrier granted the claimant multiple postponements and subsequently nine months after the original date scheduled for the Hearing, the formal Investigation was held on June 9, 2010. At the Hearing and afterwards while the claim was still being handled on the property, no proof was proffered by a doctor or medical expert to substantiate the Organization's assertion that the Claimant was medically unfit to attend the Hearing. The Carrier did not violate the Claimant's Agreement right to a fair and impartial Hearing, in this instance... the Board finds that not only did the claimant choose not to appear at the Investigation he offered no evidence that he was ill and could not attend. The Board further notes that there is no requirement that an accused employee must attend."**

Finally, the Carrier argues dismissal is appropriate for this Claimant based on his employment history. At the time of this incident, the Claimant was subject to a last chance agreement (SBA 1120, Award 155). The Claimant was dismissed in May 2014 after moving through the Carrier's Progressive Discipline Policy for continuing attendance infractions. The Board in that case took his years of service into consideration and returned him to work with one last opportunity to "prove to the

Carrier that he can again become a trusted and valued employee.” The Carrier contends the Claimant failed to live up to those terms and that termination is the proper penalty at this point.

The Claimant, arguing on his own behalf, asserts that a medical situation prevented him from opening the register on time on August 19, 2016. The Claimant insists he arrived to work on time but because he felt ill, spent a half-hour in the bathroom. He acknowledges that he did not log in to his computer in the station office until 5:27 AM. The Claimant also acknowledges he probably should not have come in to work at all that day. Despite this, he argues the Carrier should have taken his medical condition into consideration as a mitigating factor when it charged him.

The Claimant also argues the Carrier denied him a fair and impartial hearing when it proceeded with the Investigation in his absence. The Claimant asserts he was unable to attend because he had been admitted to the hospital. Documentation of that admission was not provided until the Claimant filed his submission before this Board. The Claimant acknowledges the Investigation hearing was postponed many times but argues this procedural defect and violation of his rights alone are sufficient cause to have his claim sustained.

The Board has carefully considered the record and arguments in this case. We note at the outset that new arguments presented to the Board cannot be considered. The Parties are required to develop their contentions during the on-property handling of the case. We need not cite awards for this well-established principle that the Board may not consider de novo arguments which have not been considered on the property.

The Board agrees with the Carrier’s argument that it was not required to postpone the Investigation for a ninth time. The Claimant failed to present documentation of his hospital admission on August 4, 2017. When the Carrier decided to go forward with the Investigation, it did not violate the Claimant’s due process rights. As referee Miller points out, there is no requirement in the Agreement that an accused employee must attend the formal investigation. Therefore, the Board finds no procedural errors that would prevent it from reaching the merits of this case.

The evidence of record establishes the Carrier met its burden to prove the Claimant violated the Carrier’s Rules as charged. An employer’s most basic expectation is that employees show up on time prepared to work. Even if the Claimant was at his assigned location on time, and there is no evidence to support his claim that he was, he failed to open his register until 5:27 AM, twenty-seven minutes after the start of his shift.

Carrier Rules require Station and Ticket Office employees to report for work on time. If an employee is unable to open the station on time, he is required to notify the District Manager. In this instance, the Claimant failed to notify Ms. Gibson he was unable to open his station on time. For these reasons, the Board finds the Claimant violated the rules as charged and upholds those charges.

This Claimant is no stranger to discipline for attendance issues. In fact, less than one year before this incident, the Claimant was reinstated by Referee Hampton, who stressed it was a “last opportunity for continued employment with the Carrier.” The Carrier was justified in its decision to hold this Claimant to the terms of the last chance opportunity and dismiss him from service.

For these reasons, the Board finds it must deny the claim.

**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 4th day of September 2019.