

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43974
Docket No. MW-44906
20-3-NRAB-00003-180378**

The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (
(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [fifteen (15) working day suspension] imposed upon Mr. T. Saint Louis for alleged violation of ‘ ... Code of Conduct Rule 1 - Knowledge of the Rules, Rule 2 - Courtesy and Professional Conduct, Rule 4 - Absence from Duty, Rule 8 - Prohibited Behaviors and Behavioral Expectations for Keolis CS Employees and Prohibited Behaviors, Rule 15 - Obeying Instructions, Directions and Orders, Rule 17 - Attending to Duties and Rule 23 – Exchange of Duties’ following an investigation held on May 5, 2017 was excessive and unwarranted.**

(Carrier’s File BMWE 03/2017 KLS).”

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.

In a letter dated March 3, 2017, the Claimant was notified to attend an investigation in connection with an allegation that he failed to report to Sprague Street in a timely manner after completion of work in Yard 2. After postponement, a hearing was held on May 5, 2017.

The Claimant was advised in a letter dated March 15, 2017, that he was guilty of violating Code of Conduct Rule 1, Knowledge of Rules Rule 2, Courtesy and Professional Conduct Rule 4, Absence from Duty Rule 8, Prohibited Behaviors Rule 15, Obeying Instructions Rule 17, Attending to Duties Rule 23, and was assessed a 15 day discipline.

The Carrier maintains that there is substantial evidence in the record of the Rule violations. The evidence shows that the Claimant and the Assistant Foreman were given an order to travel to Sprague Street. Contrary to the Organization's assertion, the Claimant and the Assistant Foreman did not merely stop at McDonald's to use the restroom and purchase coffee and continue on their way. They lingered in the restaurant for longer than an hour. The Assistant Foreman was not authorized to ignore or modify the order of the Foreman.

The Carrier continues that the discipline was commensurate to the misconduct and not an abuse of Carrier discretion.

The Organization maintains that the Carrier failed to establish substantial evidence of the cited infractions. There was no foreman when the Claimant reported to his job site. He was under the supervision of the Assistant Foreman. After completing their work at Yard 2, the employees went to Sprague Street and did their work. They stopped, as was common practice, at McDonalds for the restroom and to purchase coffee. They then proceeded to Sprague Street.

The Organization continues that, even if the cited rules were broken, there is no basis for a 15 day suspension for an employee who has no disciplinary background. The

Carrier has deviated from the policy of progressive discipline and imposed discipline that is an abuse of discretion.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

This Board has reviewed the evidence in the instant matter. The Claimant is charged with violations related to a failure to follow an order to travel to Sprague following completion of work in Yard 2. There is substantial evidence in the record to show the Claimant and the Assistant Foreman stopped at a local restaurant for more than an hour between Yard 2 and Sprague Street. This was a violation of the directive and of Carrier rules.

The evidence shows that the Claimant committed the cited rule violations. The next inquiry is whether the discipline was an abuse of Carrier discretion. In this matter, this Board finds that the Carrier exceeded its discretion when imposed a 15-day suspension. The specific facts of the instant matter show that discipline short of a 15-day suspension is appropriate. Based upon the facts and the Carrier discipline policy, a seven day suspension is appropriate to the misconduct.

Claim sustained in part and denied in part as detailed above.

AWARD

Claim sustained in accordance with the Findings.

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 5th day of March 2020.