

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43976  
Docket No. MW-45447  
20-3-NRAB-00003-190298**

**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 [ one (I) day suspension] imposed upon Mr. W. Barber, by letter dated April 20, 2018, for alleged failure to report for duty on November 13, 14, 20, 30 and December 27, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File Barber-01 /BMWE 09/2018 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant W. Barber shall be placed back to the First Step of the Attendance Policy and compensated for one (1) day.**

**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 January 10, 2018, the Claimant was notified to attend an investigation in connection with an allegation that he failed to report for duty on November 13, 14, 20, 30 and December 27. Following postponement, the investigation was held on April 12, 2018.

The Claimant was advised in a letter dated October April 20, 2018, that he was found guilty of violating Rule 1, Rule 4, Rule 8(e) and Rule 17. The Claimant was issued a one-day suspension.

The Carrier maintains that there is substantial evidence in the record of the Rule violations. The evidence shows that the Claimant failed to report on the cited dates. The Claimant did not notify his supervisor prior to not reporting for work. The Claimant also did not produce any documentation for absences.

The Organization counters that the Claimant's testimony shows that he did not violate the Carrier rules. The Claimant contacted his foreman within the appropriate time frame. Further, the Claimant's time cards were filled out by another employee and do not contain the Claimant's signature on three of five time cards.

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 failing to report to work. The Carrier has proven that the Claimant failed to report to work on the cited dates. The question turns to the appropriateness of the one-day suspension.

The evidence establishes that the Claimant had a signed Step 1 Attendance Waiver dated March 24, 2017. The Carrier did not abuse its discretion by issuing a one-day suspension.

**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 5th day of March 2020.