

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43977  
Docket No. MW-45477  
20-3-NRAB-00003-190045**

**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 (dismissal) imposed upon Mr. S. Ford, by letter dated March 29, 2018, for alleged falsification of payroll documents that occurred on March 13, 2018 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File Ford-01/BMWE 07/2018 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant Ford shall be fully exonerated of all charges against him by the Carrier and be reinstated immediately with no loss of seniority and be compensated any missed wages, benefits, and vacation.”**

**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 16, 2018, the Claimant was notified to attend an investigation in connection with an allegation that he out a timecard to include overtime that he did not work on March 13, 2018. A hearing was held on March 23, 2018.**

**The Claimant was advised in a letter dated March 29, 2018, 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, Obeying Instructions, and Rule 17, and was assessed a dismissal from service. The instant claim followed.**

**The Carrier maintains that there is substantial evidence in the record of the Rule violations. The evidence shows that submitted for overtime that he did not work. The hearing officer heard the evidence and there is no showing that the conclusion that the Claimant violated the cited rules was in error. Although the Claimant contends that he performed work at Bradford, his supervisor did not order him to go to Bradford. Rather, the Claimant's supervisor thought the Claimant ceased work at 1530 hours. Further, the Claimant held his time card for days before submitting it. Although he maintained he did not review the time card after filling it out in advance, he had the card for a number of days prior to submitting it.**

**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 proof that the Claimant intended to defraud the Carrier, but rather that the time card was an oversight and based upon past timecard experience. The Claimant went to Bradford to work when the rest of the crew went elsewhere to perform snow removal and then submitted for that time at Bradford. The Claimant filled it out in advance based on his experience. He failed to review it prior to submitting it to the Carrier. He forgot to correct the entry.**

The Organization continues that, even if the cited rules were broken, there is no basis for terminating an employee who has no disciplinary background and did not intend to defraud. 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 submitting a claim for overtime that he did not work. There is substantial evidence in the record that the Claimant filled out his time card in advance in submitted it days after the event. It was not error for the Carrier to conclude that this was an intentional act. The Claimant submitted a timecard for work to which the Claimant had not been assigned and occurring at a time when the Foreman thought Carrier had left for the day.

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 dismissal. The evidence shows that the Claimant filled out his timecard in advance of the overtime for snow removal that he expected to work. The Claimant did not correct the timecard.

In this matter, this Board finds that the Carrier exceeded its discretion when it terminated the Claimant. The specific facts of the instant matter show that discipline short of termination is appropriate. However, the specific facts do not warrant an award of backpay. Given the nature of the infractions, the Claimant should be reinstated with seniority unimpaired but with no award of backpay.

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.**