

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 44378  
Docket No. MW-45735  
21-3-NRAB-00003-190467

The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.

(J.F. Dick

**PARTIES TO DISPUTE:** (

(Norfolk Southern Railway Company  
(former Norfolk and Western Railway Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- “(1) The Carrier, by letter dated December 21, 2018. Violated the provisions of Rule 27 of the Master Clerical Agreement dated April 1, 2013 when as a result of a hearing and investigation arbitrarily, capriciously, assessed a ten (10) day actual suspension against clerk Juli Dick for alleged violation of “you abandoned your position and left work early without informing a supervisor and without obtaining permission, at 7:00 p.m. on November 24, 2018, while on duty as a shipper/receiver at Juanita Locomotive Shop.
- (2) In view of such arbitrary, capricious, unjust, discriminatory and unreasonable action of the Carrier, it shall now be required to compensate Clerk Juli Dick for all time lost during the 11period of discipline, December 21, 2018 through December 30, 2018. The Carrier shall expunge from Claimant’s record any and all reference to the unwarranted charge as contained in Mr. Jason Hartman, Senior General Foreman’s letter of December 4, 2018 and also be required to compensate Clerk Juli Dick for any time lost as a result of attending the hearing held in connection with the discipline assessed.

**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.

This dispute concerns an employee who entered the Carrier's service on November 3, 2014 and just over four years later was charged with violation of two of the Carrier's rules when she absented herself from duty without receiving permission to do so from a non-agreement supervisor. The Claimant had one prior, unrelated disciplinary incident for which she agreed to a waiver and was assessed a five (5) day deferred suspension and ninety (90) days probation.

The rules found to be violated after an investigation on the Property were:

**NORFOLK SOUTHERN OPERATING RULE 919- Reporting for Duty**

Employees must report for duty properly rested at the designated time and place. They must be alert and attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their places without proper authority.

**And:**

**JLS SAFETY BULLETIN 111**

**All Juanita Locomotive Shop Employees**

**SUBJECT: Proper Procedure/Absent from your work assignment**

The following instructions are in effect concerning the proper procedure when an employee is unavoidably absent from work. These instructions apply to all employees assigned to the Juanita Locomotive Shop.

Proper Authority for the purpose of this instruction is a non-agreement supervisor who must be contacted to acknowledge your intent to absent yourself from your work assignment. In the event that it becomes necessary to mark off, there are only two acceptable methods to do so;

- a) Call your direct non-agreement supervisor. If you are unable to reach your direct non-agreement supervisor;
- b) Call 814-949-1300; leave the date, your full name, employee#, department, your supervisor's name, reason for calling off, anticipated number of days you will be off and a phone number where you can be reached.

In addition, when absenting yourself from your assignment and/or duty, do so as soon as it is known that you must absent yourself from your assignment and/ or duty. When doing so, provide as much information as you can as to why you must absent yourself and your estimated time for returning to work.

There is no dispute that the Claimant reported for duty at 3:00 PM on Saturday, November 24, 2018 for an eight (8) hour afternoon shift as a Shipper/Receiver at the Storehouse at the Juanita Locomotive Shop. There is likewise no dispute that the Claimant signed out and left without notifying anyone at 7:00 PM after only completing four (4) hours of her eight (8) hour assignment.

The Claimant, at the investigation tried to mitigate her violation of the rules by explaining that she had never been properly instructed on the procedure for absenting one's self mid-shift and believed that the call off instructions put forth in the JLS Safety Bulletin was only for full shift mark offs.

Moreover, the Claimant explained, on Saturdays and Sundays in particular, in the Storehouse where she is assigned there is absolutely no Gang Leaders, absolutely no Material Foremen and absolutely no non-agreement supervisors at all. Adding to the credibility of the Claimant's testimony in that regard, Carrier' witness at the investigation, the Senior General Foreman for the back shop testified that on Fridays

and Saturdays he is the General Foreman for the whole area and that the problem has been ... that we don't know what these individuals are doing, we don't know when they're on vacation, we don't know anything if they are not a part of our area, but they work in our area.

Further, while the Claimant now realizes that she should have made a call or sent an email, she testified at the investigation that she does not have access to a computer in the Storehouse nor has she been trained on use of the Carrier's phone system in the Storehouse.

Suffice to say, the Board, after thorough review of the record, this Board, recognizes that there could have been some confusion on the Claimant's understanding of proper procedure. Nevertheless, the Claimant admitted at the investigation that she had been issued the rules in written form, that the rules had been discussed at Safety Meetings where she signed her name to acknowledge having been present and the Claimant admitted at the investigation that she had violated the rule. The charges against her were thus proven by substantial, probative evidence.

But this Board considers more than whether the charges against a Claimant were proven. We also review the record with an eye toward whether the Claimant and the Organization receive all of the due process guaranteed by the Parties' Agreement and whether, if the charges were proven, the corrective action assessed was arbitrary, capricious or excessive.

In this situation, the Claimant had but one blemish on her work record for which she received a five (5) day deferred suspension. While the Claimant did admit to violating the rules, the Board is cognizant that the Claimant's transgression was more the result of misunderstanding than of the Claimant's desire to cheat the Carrier out of a fair day's labor, after all, the Claimant did correctly record the accurate hours worked, she just handed the paper to the wrong person. To jump from a five (5) day deferred suspension to a ten (10) actual, given these particular facts, seems to this Board to be excessive. For that reason, the Board instructs the Carrier to reduce the corrective action assessed to a five (5) day actual suspension. Claim sustained in part and denied in part in accordance with the Findings.

**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 13th day of April 2021.**