

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44703
Docket No. MW-46371
22-3-NRAB-00003-210041**

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

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Keolis Commuter Services, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. D. Trayers, by letter dated February 20, 2020, for alleged violation of Keolis Code of Conduct Rule 1 - Knowledge of Rules, Rule 2 - Courtesy and Professional Conduct, Rule 4 - Absence from Duty, Rule 8 - Behavioral Expectations for KeolisCS Employees and Prohibited Behaviors, Rule 15 - Obeying Instructions, Directions and Orders and Rule 17 - Attending to Duties in connection with his alleged falsification of payroll documentation, failure to properly use the KRONOS time clock system, accepting payment for shifts not worked during the months of December 2019 and January 2020, failure to perform snow duties on January 18, 2020, not being present at proper job location on January 24, 2020, failure to perform and obey directions of his supervisor when failing to submit paperwork in a timely manner and not utilizing equipment as required between the dates of December 6, 2019 and January 27, 2020 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File BMW 20.051 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Trayers shall now be fully exonerated of all charges, placed back into service effective immediately with seniority unimpaired, fully compensated for any missed straight**

time, overtime, double time wages as well as per diems, credits for vacation and all other benefits.”

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.

The Claimant, Track Foreman Dennis Trayers, has been employed by the Carrier since January 14, 2015. He was dismissed on February 20, 2020, for violating the Carrier's Code of Conduct after a review of the “supplemental work approval system” indicated he falsified payroll documents when he logged in and/or out of the KRONOS Time Clock System while not at his assigned work site on 29 occasions between December 1, 2019 and January 22, 2020, resulting in his receipt of compensation for work not performed. A Notice of Formal Investigation was issued on January 31, 2020, for a hearing to be held on February 6, 2020. Following a postponement, the hearing was held on February 10, 2020.

Before reaching the merits of the dispute, the Board addresses the Organization's procedural objection alleging that the hearing officer failed to ensure the Claimant was afforded a fair and impartial hearing. A review of the record does not support the Organization's allegations. The assertion that the Claimant was not charged within 30 days of the Carrier's first knowledge of the offense, as provided by Rule 15, is unsupported by the record. Senior Engineer of Track Ronald Brousseau's testimony and supporting documentation conclusively establishes that the “supplemental work approval system” was conducted on January 23, 2020. The Notice of Formal Investigation was issued on January 31, 2020, and therefore, the charges were made within 30 days as required by Rule 15. The Organization's other procedural objections are also rejected.

In discipline cases, as the one before the Board here, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Upon review of all the evidence presented, the Board here finds that the Claimant violated the Carrier's Code of Conduct when he repeatedly logged in and out of the biometric timekeeping system in locations other than his assigned headquarters. The Claimant's actions resulted in his receiving more than a month of additional compensation for time not worked.

Senior Engineer of Track Brousseau's credible and reliable testimony establishes that the Claimant knew he was to log in and out at his headquarters as required by the Biometric Device Policy (hereinafter referred to as the "Policy") and the memorandum from the Chief Engineering Officer, issued on January 2, 2019. The Claimant acknowledged he was previously reminded of the requirements by Mr. Brousseau. The record confirms that by logging in or out of the biometric system at locations other than his assigned headquarters, the Claimant received pay for time not related to his job duties but solely for the unwarranted increase of compensation. This was not a one-time error. The record contains sufficient evidence that the Claimant engaged in a calculated effort to falsify timekeeping records on 29 occasions which cannot be interpreted as an honest mistake or misunderstanding. Such conduct constitutes theft and is in violation of the Carrier's rules and the basic tenet of trust required in the employment relationship.

The Organization's assertions that the biometric timekeeping system was defective is unsupported by the record. There is no evidence the payroll system contained a malfunction that sufficiently explained the Claimant's 29 improper entries in the seven-week period reviewed by the Carrier.

It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. Legions of arbitral awards have held that dismissal is appropriate discipline for theft of service violations such as time record falsification, regardless of length of service or prior disciplinary record. The Carrier here correctly relies on a long-held standard in the industry that such factors do not provide protection to an employee who acts dishonestly.

The Board rejects the Organization's claim that the Carrier acted arbitrarily towards the Claimant by not documenting the verbal counseling given him by Mr. Brousseau as required by the Disciplinary Action Plan. Reminding an employee of the Biometric Device Policy does not constitute a disciplinary action that requires

documentation. It was a reminder of the Carrier's Policy, which the Claimant ignored. Further, theft and others acts of dishonesty do not require advance written notice that such conduct are grounds for termination even when a first offense.

The Board here finds that the Carrier has met its burden of proof with substantial evidence and, therefore, its decision to dismiss the Claimant is upheld.

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 March 2022.