

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44739
Docket No. MW-46368
22-3-NRAB-00003-201027**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. P. Humphrey, by letter dated August 19, 2019, for alleged violation of General Code of Operating (GCOR) Rules 1. 6 - Conduct, Item 3 - Insubordinate and the Kansas City Southern Railway Company’s Video or Audio Recording Policy in connection with allegations that he recorded a portion of his formal investigation on June 13, 2019 contrary to instruction given at the investigation with Carrier’s first knowledge of incident on July 17, 2019 was excessive and without just and sufficient cause (System File KCS703SN19D/2019-0447 KCS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant P. Humphrey shall now ‘... be returned to work on his position of Machine Operator, and the claimant shall be made whole for all financial loses (sic) as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings from alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any**

overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.’”

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.

After investigation held August 6, 2019 and by letter dated August 19, 2019, the Claimant was dismissed for recording an investigation contrary to the instructions given at the opening of the investigation.

The Claimant is the same employee whose dismissal was upheld by this Board in Third Division Award 44737. In light of the Board’s upholding the Claimant’s dismissal in that case, this case is moot and shall be dismissed.

AWARD

Claim dismissed.

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 6th day of May 2022.