

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44762
Docket No. MW-46473
22-3-NRAB-00003-210364**

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: (
(Connex Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. T. Edwards, by letter dated February 6, 2020, in connection with his alleged falsification of time worked on his time sheets on multiple days was excessive, extreme, unreasonable and harsh (System File N70135020 CNX).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant T. Edwards be exonerated, the dismissal letter and all matters relative thereto be removed from Claimant’s personnel file and that Claimant be made whole for all losses suffered including vacation and retirement as a result of the Carrier’s actions.”**

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 January 28, 2020 and by letter dated February 6, 2020, the Claimant – an employee in the Carrier’s service for five years – was dismissed on allegations that on multiple days in January 2020 he falsified time on his timesheets for time worked.

At the time of the incidents, the Claimant had a 6:00 AM to 2:30 PM shift with a 30-minute break. The Claimant was required to document his shift start and completion times on timesheets. On January 2, 6, 7, 8, 9, 10, 11, 12, 13 and 14, 2020, the Claimant recorded his start times as 6:00 AM. However, the parking lot and the office in the rail yard are equipped with date and time stamped video recordings which show that for the dates in issue, the Claimant arrived after 6:00 AM on every shift at times between 15 minutes and one hour and 57 minutes after the times the Claimant reported on his timesheets. See Tr. 10-11, 15-31; Investigation Exhibits 4, 5. On January 11, 2020, not only did the Claimant record a 6:00 AM start time when he actually arrived after 6:30 AM, the Claimant departed at 4:09 PM., but recorded a 4:30 PM departure. Tr. 11; Investigation Exhibits 4-19 - 4-24.

The Claimant testified his payroll records as he reported were accurate, but he would sometimes sit in his car until the Foreman arrived and, with respect to leaving early on January 11, 2020 but recording a 4:30 departure, he did so because he did not have a meal. Tr. 33-38. With respect to the photos taken from the cameras, the Claimant would not identify himself contending that the photos were “a blur” and he also could not always identify his car. Id.

The Carrier’s dismissal of the Claimant shows that the Claimant’s denials and his version of the events were not credited. Absent compelling reasons in the record to do so, it is not the function of this Board sitting in an appellate capacity to re-determine credibility of witnesses and the necessary compelling reasons to credit the Claimant’s denials do not exist in this case. We note that contrary to the Claimant’s testimony that the photos taken from the video recordings were “a blur”, this Board’s viewing of those photos show them to be sufficiently clear allowing for positive identifications of the Claimant as was made at the investigation by someone who knew the Claimant. Moreover, a Carrier witness identifying Claimant viewed photographs showing that Claimant did not even arrive in the parking lot until after 6:00 AM the designated start times with the added identification that “I know his vehicle ... I know his car, sir.” Tr. 15, 21. Further, aside from being an admission that he did not report for work until after 6:00 AM,

the Claimant's explanation of his late arrivals that he sat in his car waiting for his Foreman to arrive would amount to a change of his required shift start from 6:00 AM to "when the Foreman arrives." Claimant's shift started at 6:00 AM and not when his Foreman arrived. And a number of the photos show Claimant not arriving at the parking lot in his vehicle until well after the 6:00 AM start time. See e.g., Investigation Exhibits 4-00 (top photo showing the Claimant's vehicle arriving at 7:57 AM); 4-11 (arriving at 6:46 AM); 4-21 (arriving at 6:36 AM); 4-26 (arriving at 6:24 AM); 4-28 (arriving at 6:26 AM); 4-30 (arriving at 6:29 AM). The Claimant's start time of 6:00 AM is posted on the job he bid on. Tr. 26. Using the substantial evidence standard, the Claimant's testimony was inherently not credible and we find no reason to disturb that obvious conclusion made by the Carrier.

Substantial evidence therefore supports the Carrier's conclusion that the Claimant engaged in the charged dishonest conduct by falsifying his timesheets. As the Claimant was compensated for time worked based on his reported times, Claimant's false reporting on his timesheets amounted to theft of time. That is sufficiently serious for this Board to find that his dismissal was not arbitrary.

A number of procedural arguments were made by the parties which do not change the result.

The Carrier argues that the Organization's appeal was untimely in that the Organization did not take an appeal within the 60-day time period in Rule 20, Section 2 ("[i]f a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of the disallowance"). The Organization argues that it complied with the time limits. From the arguments made, we cannot find that the Carrier has demonstrated that the Organization's appeal was untimely. In any event, this Board has considered the merits of this discipline and have upheld the Claimant's dismissal, thereby making the Carrier's procedural argument moot.

The Organization has also raised procedural arguments which, in our opinion, cannot change the result. As the Organization points out in its arguments, "... all of this took place in the midst of a global pandemic" Organization Submission at 6. Without prejudice to the parties' procedural arguments which they can again make in the future, given the global pandemic which existed, resolving this case on the merits is in the best interests the parties and this process – and that is what we have done.

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 29th day of July 2022.