

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44763
Docket No. MW-46474
22-3-NRAB-00003-210383**

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. M. Harris, 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 N70135120 CNX).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant M. Harris 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 18 years – was dismissed for falsification of time worked as reported on the Claimant’s timesheets.

This case raises similar issues as those discussed in detail in Third Division Award 44762. As did the employee in Third Division Award 44762, at the relevant time the Claimant had a 6:00 AM to 2:30 PM shift with a 30-minute break and the Claimant reported his time on timesheets from which he was paid. The Carrier has video recordings of the times when employees arrive and depart the rail yard.

The evidence shows that the Claimant’s reported shift start and finish times did not match the video recordings of when the Claimant arrived and departed on the dates in issue.

Nine of the shifts worked by the Claimant between January 2 and 14, 2020 are the subject of this matter. On six those shifts (January 6, 7, 8, 9, 10 and 11), the Claimant reported on his timesheets as starting at 6:00 a.m. On two of the shifts (January 12 and 13), the Claimant reported starting at 6:30 and 7:00 AM, respectively. The video recordings for those days show that the Claimant arrived between 17 and 46 minutes after the times reported by the Claimant on his timesheets. Further, on one of the dates (January 2), the Claimant reported leaving at 2:30 PM while the video recording shows the Claimant departing at 2:08 p.m. Tr. 10-11; Investigation Exhibits 4, 5.

The Claimant denies that his timesheets were fraudulent and asserts that “... we weren’t instructed that we have to be in the office at 6:00.” Tr. 26. With respect to his early departure on January 2, the Claimant asserts that the Safety Director told the employees in a rules class that “once we finished ou[r] test and got our cards that we were free to go” and his supervisor heard the Safety Director make that statement. Tr. 27-28. On other days at issue, the Claimant asserts that he was gathering his materials after arriving in the parking lot; as the Foreman he had job briefings with other individuals, including the surfacing crew; or had started actual work before entering the office. Tr. 29-34.

The Claimant’s supervisor testified that on the dates that the Claimant testified he was holding briefings with the surfacing crew on his way into work, that the Claimant would have had no reason to do so. Tr. 44.

As we noted in Third Division Award 44762:

“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.”

The same rationale holds in this case. Putting aside the Claimant’s explanation that the employees were released early by the Safety Director after completion of the rules class on January 2, 2020 which can explain the 22 minute early departure on that date, taking the Claimant’s explanations that he was gathering his materials after arriving in the parking lot; as the Foreman had job briefings with other individuals, including the surfacing crew; or had started actual work before entering the office for the other dates at issue, there are still not sufficient compelling reasons in this record for this Board sitting in an appellate capacity to make a credibility finding different from that made by the Carrier which flows from the Carrier’s action of dismissing the Claimant.

We note that the Claimant’s gathering of his materials and asserted job briefings held by the Claimant before he signed in are not fully explained by the substantial length of time (between 24 and 46 minutes) that the Claimant asserts it took to perform those functions before signing in. Further, the Claimant’s supervisor’s testimony that the Claimant would have had no reason to hold briefings with the surfacing crew on his way into work as the Claimant testified gives this Board a further lack of reason to find the Claimant’s testimony credible when the Carrier did not.

The bottom line here is that the Carrier dismissed the Claimant after the investigation and doing so meant that the Carrier did not credit the Claimant’s explanations. With this Board’s limited review capacity concerning credibility determinations, there are just no compelling reasons in this record for this Board to come to a different conclusion.

Substantial evidence therefore supports the Carrier’s determination that the Claimant engaged in the charged misconduct of falsification of his timesheets. That misconduct is sufficiently serious for this Board to find that dismissal was not arbitrary.

For reasons discussed in Third Division Award 44762, the Carrier has not shown that the Organization was untimely concerning its appeal; in any event, in light of the result on the merits, that argument is moot; and the other procedural arguments made here need not be addressed as they do not change the result.

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.