

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44764
Docket No. MW-46475
22-3-NRAB-00003-210384**

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. R. Stuckey, 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 N70135220 CNX).**
- (2) As a consequence of the violation referred to in Part (1) above, we request that Claimant R. Stuckey 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 29, 2020 and by letter dated February 6, 2020, the Claimant – an employee in the Carrier’s service since March 2015 – was dismissed for falsification of time worked on his timesheets on multiple days.

This case raises similar issues as those discussed in detail in Third Division Award 44762 and Third Division Award 44763. As did the employees in those cases, 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.

Six of the shifts worked by the Claimant between January 2 and 14, 2020 are the subject of this matter. On those six shifts (January 2, 6, 7, 8, 9, and 14, 2020), the Claimant reported on his timesheets as starting at 6:00 AM. The video recordings show that Claimant arrived between 26 and 76 minutes after the times reported by the Claimant on his time sheets. Tr. 10-11; Investigation Exhibits 4, 5.

The Claimant testified that he had an agreement with his supervisor Senior Supervisor of Track J. Stingley which the Claimant described as allowing him to falsify his timesheets (Tr. 20-21):

“A. ... I went to him [Stingley] because I moved far and I asked him, “Is it okay for me to come in you know a little late?” He said, “That’s not a problem.” You know. You can – I said, “You want me to put the time when I’ve came in or do you want me to put it at 6:00?” And he was like you shouldn’t be – “You should be all right. 6:00 is good.” So – and where I went wrong at, I didn’t get that in writing.

Q: Okay. Now let me make sure I’m clear here on this. So you’re telling me that Mr. Stingley told you you could come in at 6:30 and you could put 6:00 on your timesheets. So you’re telling me Mr. Stingley told you to input falsified time, fraudulent time.

A: Yes.

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Q: Okay. And Mr. Stingley told you – there once again, he told you to input fraudulent time.

A: Correct.”

Stingley denied the Claimant’s assertions that he gave the Claimant permission to falsify his timesheets (Tr. 26-27):

“Q:... Have you at any time told Mr. Stuckey that he could come in at 6:30 as opposed to 6:00?

A: No.

Q: Okay. Have you at any time told Mr. Stuckey that he could come in at 6:30 or later and claim time for coming in at 6:00?

A: No.

Q: Okay. So just so I’m clear, at no time have you told Mr. Stuckey that he could input fraudulent payroll?

A: No.

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Q: Okay. Have you told any employees under your jurisdiction they could input fraudulent time?

A: No.

Q: Okay. If you did do something like that, what would happen to you?

A: I would be terminated.”

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.

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. Indeed, if we were to accept the Claimant’s testimony as credible over the Claimant’s supervisor Stingley’s testimony, we would have to find that Stingley gave the Claimant explicit permission to falsify time records to the extent demonstrated in this record. That leaves this Board with a simple question. Why would Stingley do so and especially do so for the amount of time and number of days involved in this case? That question is not answered.

Substantial evidence therefore supports the Carrier’s determination that 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.