

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45068  
Docket No. MW-46665  
24-3-NRAB-00003-210072**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

**PARTIES TO DISPUTE: (**  
**(Keolis Commuter Services**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. R. Sweeney, by letter dated February 20, 2020, for alleged violation of Keolis Code of Conduct: Rule 1 - Knowledge of the Rules, Rule 2 - Courtesy and Professional Conduct, Rule 4 - Absence from Duty, Rule 8 Behavioral Expectations for Keolis CS 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 20.050 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Sweeney 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.

**Factual Background:**

In October 2019, Claimant's headquarters changed from Readville to Walpole. As such, Claimant was required to clock in and out at Walpole, his assigned work location. Employees in Claimant's gang were specifically told by their manager, Senior Engineer of Track of the South Side R. Brousseau, that they were to use the time clock at Walpole. On January 2, 2019, Chief Engineering Officer L. Gros, also issued a reminder memorandum to all engineering employees, including Claimant.

Claimant was accused of falsifying documents and overpaying himself based on his input of payroll. The allegations were contested by the Organization, and the claim has been processed through the grievance procedure to consideration by the instant Board.

**Position of Organization:**

The Organization argues that the Carrier exceeded the contractual time limit for charging Claimant. Rule 15 of the Collective Bargaining Agreement provides: "No charge shall be made that involves any offense of which the Company has had actual knowledge thirty (30) calendar days or more." As the Organization sees it, the Carrier had first knowledge of the issues here involved beginning December 11, 2019.

The Organization contends that a review of the Carrier's February 11, 2020 letter clearly shows the Carrier's intent to dismiss Claimant prior to affording him a fair and impartial investigation. The Carrier removed Claimant from service pending

investigation by letter dated February 11, 2020, and instructed him to return all company property before February 18, 2020. This constituted a severance of the employment relationship prior to Investigation.

The Organization notes that the Carrier failed to provide any evidence whatsoever that verbal counseling took place despite the Carrier's Disciplinary Action Plan Policy which provides that "verbal counseling should be documented in writing by the supervisor." In this regard, Brousseau admitted during the Investigation that he did not follow the Carrier's policy and that he had no proof that the V-901 work crew was ever counseled. The Organization maintains that the Carrier violated its own Disciplinary Action Plan Policy when it arbitrarily bypassed the First Step – Informal Discipline and the Second Step – Formal Discipline – Written Warning/Reprimand of their Progressive Discipline Process and went directly to the Third Step – Formal Discipline – Investigation and Hearing. Claimant never had a chance to correct his behavior.

**Position of Carrier:**

Between December 1, 2019 and January 22, 2020, on at least 13 occasions, Claimant falsified a significant number of time documents by intentionally clocking in and/or out away from his assigned work location. Generally, Claimant was signing in or out at the Readville headquarters instead of the Walpole headquarters as directed. Management was concerned that employees were abusing the new time entry system by signing in or out closer to their homes as opposed to at their assigned location. That would lead to employees deriving pay for time while commuting, rather than working.

The Carrier proved through significant evidence, including biometric time entry records, that Claimant was away from his assigned place of work when he did this. These false time entries resulted in Claimant being paid for unworked time; the Carrier sees this as theft.

Claimant was given permission to clock out in Readville instead of his assigned location at Walpole on Tuesdays and Thursdays only. However, he clocked out from Readville on numerous occasions, not only on Tuesdays and Thursdays; each of the 13 occasions occurred on days other than a Tuesday or Thursday. Claimant stated that he clocked in at Readville instead of Walpole because he was required to pick up paperwork from Readville. However, Brousseau testified that there is a fax machine at the Walpole location that has the ability to receive that paperwork. This negated

the need for Claimant to go to Readville as claimed. On January 24, 2020, the Assistant Chief Engineer of Track drove by Claimant's assigned worksite; Claimant was nowhere to be found. In the Carrier's view, false time entry is dishonest and justifies dismissal.

**Analysis:**

We are not persuaded that the Carrier was on notice of Claimant's violations prior to performing an audit. Also, we do not find that instructing Claimant to remove property from the premises constituted prejudicial prejudgment in his Investigation. As a result, we do not find procedural flaws with this case.

The record establishes that Claimant was advised on multiple occasions of the requirement that he clock in and out at Walpole, except for on Tuesdays and Thursdays when he was allowed to punch from Readville. His excuse regarding paperwork at Readville was not credible and damages the reliability of his testimony.

Claimant was fully noticed about the Carrier's requirements regarding location for clocking in and out. He repeatedly clocked out from unauthorized locations despite the warnings, indicating he was not amenable to learning from his mistakes. He ignored the opportunities to correct his behavior and chose to continue defying Carrier requirements. The Carrier has met its burden of proof in this case.

**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 31<sup>st</sup> day of October 2023.