

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45394
Docket No. MW-47529
25-3-NRAB-00003-220747**

The Third Division consisted of the regular members and in addition Referee Diego Jesús Peña 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. Harris, by letter dated March 3, 2022, 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, and Rule 17 – Attending to Duties, in connection with his alleged: failure to complete the task directed to him by his manager on Friday, February 11, 2022, without punching out or notifying his manager that he was leaving railroad property at 11:30 A.M. in his personal vehicle and his not being observed returning by the end of his shift at 3:30 P.M. on Friday, February 11, 2022, without punching out or notifying his manager that he was leaving the property and; acting in a dishonest and disrespectful manner during a phone call between himself and his manager on Tuesday, February 15, 2022; and his attempting to falsify payroll documents when knowingly and willfully told his manager that he worked until 3:30 P.M. on February 11, 2022 and his becoming combative and attempting to intimidate his manager while speaking in a raised voice with an angry tone when he was asked to write a statement to the fact that he worked until 3:20 P.M. on February 11, 2022 and his further stating that he would not write any statement and eventually hanging up on his manager, was not fair and impartial, not on the basis of proven charges, arbitrary, capricious and excessive (Carrier’s file BMW 22.021 KLS).**

- (2) As a consequence of the violation referred to Part (1) above, Claimant R. Harris shall “***be placed back into service effective immediately, will all lost straight time, overtime, double-time wages, his safety pay allotments, credits for vacation, credits for retirement, and all other benefits that are applicable to him under our Collective Bargaining Agreement for his unjustified suspension, that all charges fully exonerated from his record.”

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

Claimant, Mr. Rudolph Harris, began his employment with the Carrier in 2015. He reviewed and acknowledged the Carrier’s Code of Conduct and Attendance Policies on August 15, 2016, and knew that he could be disciplined for violating these policies.

On February 11, 2022, Brian Walsh, B& B Roadmaster and the Claimant’s supervisor, directed the Claimant, a B&B Mechanic, to deliver two salt boxes from the Ayers Stimulus Building (“headquarters”) to different locations; one salt box was to be delivered to Wachusett Station, the other to the Westminster layover. Both salt boxes were loaded on a boom truck. Mr. Walsh left after instructing the Claimant to deliver the salt boxes to their respective destinations. When Mr. Walsh later returned to headquarters, he noticed that the boom truck was in the yard with one salt box on its bed. He did not see the Claimant in the area. Mr. Walsh also noticed that the Claimant’s vehicle was not in the parking lot.

Four days later, on February 15, 2022, Mr. Walsh in reviewing the payroll records discovered that the Claimant did not punch out at the end of his shift on February 11—the day he was supposed to deliver the salt boxes. He telephoned the Claimant asking him why did not punch out on February 11. The Claimant told Mr. Walsh he forgot, but assured Mr. Walsh he had worked until 3:20 that afternoon. Because he had been at headquarters on February 11 and had not seen the Claimant, Mr. Walsh believed the Claimant was not being honest.

Mr. Walsh then asked the Claimant to provide a written statement saying he worked until 3:20 PM. The Claimant refused. When Mr. Walsh told the Claimant that he had been at headquarters from noon to 3:30 PM and that he did not see the Claimant or his vehicle in the parking lot, the Claimant became defensively aggressive. The Claimant told Mr. Walsh he left to run a personal errand around 2:00 PM and returned to headquarters at approximately 3:30 to pick up his iPad.

As the conversation continued, the Claimant told Mr. Walsh “you are either with me or against me.” The Claimant then ended the conversation by hanging up. The Claimant later texted Mr. Walsh saying he was fine if he decided not to pay him for February 11.

On February 17, 2022, the Carrier notified the Claimant he was being removed for actions detrimental to the service. That same day, he was also served with a Notice of Investigation concerning the following:

Charge 1:

Development of the facts and determination of your responsibility, if any, that while assigned as a B&B mechanic on Friday, February 11, 2022, you failed to complete the task directed to you by your manager. It is alleged that you only delivered 1 (one) of the 2 (two) salt boxes that were previously loaded on the boom truck AA00727 and returned to your headquarters by 10:43 a.m. with the remaining salt box left in the boom truck.

Charge 2:

It is further alleged that you were observed leaving railroad property at 11:30 a.m. in your personal vehicle and you were not observed returning by end of your shift at 3:30 p.m. You did not provide an out punch on that

day, Friday 11, 2022, and did not notify your manager that you were leaving the property.

Charge 3:

It is also alleged that you acted in a dishonest and disrespectful manner during a phone call between yourself and your manager on Tuesday, February 15, 2022. You attempted to falsify payroll documents when you knowingly and willfully told your manager that you worked until 3:20 p.m. on February 11, 2022. When asked to write a statement to the fact that you had worked until 3:20 pm. on February 11, 2022, you became combative and attempted to intimidate your manager while speaking in a raised voice, angry tone. You stated that you would not write any statement and eventually hung up on your manager.

These actions, if proven, were conducted in a manner that can best be described as dishonest, disrespectful, insubordinate, and detrimental to the service.

The Carrier conducted a formal investigation on February 24, 2022. At that investigation, the following facts were developed:

- GPS records confirmed that the Claimant only delivered one of the two salt boxes. The GPS records confirmed that after delivering the first salt box, the Claimant returned to headquarters by 10:43 AM and the second salt box remained undelivered.
- A second manager, Mr. Gene LeBlanc, B&B Roadmaster, heard the February 15, 2022 telephone conversation between Mr. Walsh and the Claimant. Mr. LeBlanc corroborated Mr. Walsh's description of his conversation with the Claimant.
- The Claimant admitted he did not deliver the second salt box for two reasons: a safety issue and a family emergency. He claimed he could not unload the second safety box safely. The Claimant also said he had been notified of a family emergency, and that he left work immediately. He denied telling Mr. Walsh "you're with me or against me."

On March 3, 2022, the Hearing Officer conducting the formal investigation notified the Claimant that evidence developed at the investigation substantiated the charges. The Hearing Officer made the following findings and conclusions:

- “Evidence, including testimony and Exhibits B, I, and K prove that you knowingly and willfully violated the Keolis Code of Conduct policy when you left work without notifying your manager that you were leaving work on February 11, 2022 and then later attempted to be paid for the time you did not work that day.”
- “Evidence, including testimony and Exhibits I and K prove that you violated the Keolis Code of Conduct policy when you acted in a dishonest, rude, unprofessional, and discourteous manner towards your supervisor on February 15, 2022.”
- “In summary, I find that that the Carrier has proven that you violated all of the charges cited in the Notice of Investigation.”

Based on the Hearing Officer’s findings and conclusions, the Carrier dismissed the Claimant.

Position of Organization

The Organization contends that the Carrier failed to satisfy its burden of providing sufficient evidence to support the charges alleged and that the discipline imposed was arbitrary and capricious. The Organization also contends that the discipline imposed was unwarranted and excessive.

Carrier’s Position

The Carrier maintains that the evidence fully substantiates and supports its conclusion that the Claimant engaged in the misconduct alleged and that he violated the rules and policies identified in the charging documents. The Carrier also contends that the penalty it imposed was appropriate and not arbitrary, capricious or excessive.

Analysis

The Board sits as an appellate review forum in discipline cases. As such, it does not weigh the evidence *de novo*. The Board’s function is not to substitute its judgment for that of the Carrier, nor decide this matter in accord with what the Board believes should have been decided had it been the Board’s decision to make. Rather, the Board’s inquiry is to determine whether sufficient evidence exists to sustain the discipline imposed by the Carrier. If there is sufficient evidence supporting the Carrier’s decision, then the Board cannot disturb the penalty unless the record reflects that the Carrier’s decision was unjust, unreasonable or so arbitrary as to constitute an abuse of discretion.

Upon review of the entire record, the Board finds that sufficient evidence supports the Carrier's findings that the Claimant engaged in the conduct charged and that he violated the rules identified in the Carrier's February 17, 2022 Notice of Investigation. Because the Board finds that sufficient evidence exists supporting the Carrier's decision, the Board is without authority, on this record, to disturb the penalty assessed.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of December 2024.