

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 116
)	
and)	
)	Award No. 116
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Scott M. Goodspeed, Carrier Member
Zachary J. Wood, Organization Member

STATEMENT OF THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. S. Sibley, by letter dated April 3, 2020, in connection with his alleged conduct unbecoming an employee when he submitted payroll information for overtime service that he was unauthorized to perform on numerous occasions and for mileage expenses that he was unauthorized to claim on numerous occasions, beginning on February 3, 2020 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File MW-DECR-20-41-BB-142 NWR).
2. As a consequence of the violation referred to in Part (1) above, Claimant S. Sibley shall be reinstated immediately with all rights and privileges including health insurance, paid for all lost time including overtime, expenses and any other undue hardship. Moreover, the Claimant is entitled to all of the travel time, mileage and double time that the Claimant was shorted.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

After thoroughly reviewing and considering the record and the parties’ presentations. The Board finds that the claim should be disposed of as follows:

This matter concerns a BMWED B & B Carpenter who was charged with Conduct Unbecoming an Employee for submitting payroll and mileage expenses that were false and unauthorized by Carrier supervision between February 3, 2020 and February 13, 2020.

Claimant in this matter was removed from service on February 14, 2020 pending a formal investigation and that investigation took place on March 17, 2020.

At the investigation Claimant admitted that when his foreman submitted false time for him that he didn't say anything about it being improper and further when questioned by the Hearing Officer about the validity and accuracy of the expenses and payroll reported on his behalf Claimant admitted that it was not proper.

The Organization, however, argues that the Claimant in this matter was denied a fair and impartial investigation because the charge letter sent to Claimant did not provide a precise charge, because the Carrier failed to share pertinent documents in its possession with the Organization prior to the investigation and because the investigation was postponed by one day due to time constraints on March 16, 2020.

Moreover, the Organization contends that Carrier failed to establish that Claimant had an intent to deceive the Carrier because Claimant was not responsible for inputting his time as that was done either by his foreman or by the foreman in charge for the day.

Finally, the Organization asserts that a fair reading of the transcript of the investigation simply does not establish that the quantum of discipline here imposed was appropriate or proper.

The Board has reviewed all of the documentary evidence on this record including the transcript of the investigation and finds the Organization's procedural due process complaints to be without merit.

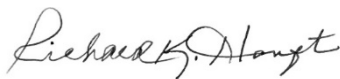
Moreover, the Carrier proved by substantial evidence, particularly the Claimant's testimony and admissions on this record, that the charge was proved.

With regard to the quantum of discipline, however, the Board takes into consideration that this is a relatively short-term employee who was not entering his own payroll or expenses but instead relied on foremen to do that for him. While the charges against him were proven, perhaps, if given another chance this might be an experience that the Claimant can learn and grow from.

The Board therefore finds that given the particular facts and circumstances in this case, that the discipline assessed was excessively harsh and Claimant shall be returned to service without compensation for time out of service.

Award:

Claim sustained in part and denied in part. The Carrier is directed to comply with this Award on or before thirty (30) days following the Award date below.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Zachary J. Wood, Employee Member

Dated at Chicago, Illinois, October 20, 2022