

**PUBLIC LAW BOARD NO. 5332**

**SYSTEM COUNCIL NO. 6  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**and**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Case No. 183**

**Statement of Claim:**

Claim on behalf of Communications Maintainer Stephen R. Workman in Portage, IN, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Maintainer Workman was unjustly withheld from Carrier's service. We also request his personal record be cleared of this matter.

**Background**

In 2019, Claimant Stephen Workman—an employee with approximately six years' tenure—was working as a Communications Maintainer headquartered in Burns Harbor, Indiana. By letter dated June 25, 2019, Claimant was instructed to attend an investigation into his "responsibility, if any, in connection with the following:

1. Failure to protect your assignment in that on June 13, 2019, supervision discovered that you abandoned your position prior to your assigned quitting time without authorization from the proper authority.
2. Failure to protect your assignment in that on June 14, 2019, supervision discovered that you were late in reporting to your assignment and you abandoned your position prior to your assigned quitting time without authorization from the proper authority.
3. Conduct unbecoming an employee in that on June 17, 2019 supervision discovered that you attempted to request pay for time that you did not work on June 13 and 14, 2019."

An investigatory hearing was held on July 9, 2019. Communications and Signals Supervisor James Davis testified that during a routine review of fuel charges on June 10, 2019, he noticed fuel purchases on Claimant's fuel card that raised a question as to whether Claimant

might be leaving his assignment prior to the end of his regular 7:00 a.m. to 3:30 p.m. shift, and arriving late at the start of shift. On June 13, Davis drove by Claimant's home prior to the end of Claimant's shift. Davis observed Claimant's work truck in the driveway at approximately 2:20 p.m. and continued to observe it while it remained there through 3:30 p.m. On June 14, Davis observed Claimant leave home at approximately 6:20 a.m. According to the records of ARA Insights, which performs fleet management for the Carrier, Claimant's fuel card was used in Kouts, Indiana at approximately 6:46 a.m., which was approximately 26.8 miles away from Burns Harbor, Indiana. At that point, Claimant could only arrive late for his shift at Burns Harbor.

Davis called Communications and Signals Supervisor Greg Temple to join him in observing Claimant during the afternoon of June 14. Davis and Temple both testified that they saw Claimant in his work truck at approximately 1:30 p.m., and followed him until he arrived home at approximately 1:48 p.m. Davis called Claimant at approximately 2:10 p.m., on speakerphone, to inquire as to Claimant's location. Both Davis and Temple heard Claimant say that he was in La Porte, Indiana doing a site check. Both supervisors observed that Claimant's work truck remained in his driveway through 3:30 p.m.

According to Davis, payroll emails sent to him on June 14, 2019 were deleted and had to be resent to him on Monday, June 17, 2019. Claimant's June 17 email indicated that he had worked 7:00 a.m. to 3:30 p.m. on both June 13 and June 14. When Davis met with Claimant on June 17, Claimant stated that he had been working on Carrier property, performing Carrier business, for his full shift on those days. Asked to provide a written statement, Claimant stated: "Last week I Steven Workman spent a full week working. I had territory maintenance, RF work, and an install one day. I have a big territory and I spend a lot of my time going back and forth."

Testifying on his own behalf at the hearing, Claimant acknowledged his June 17, 2019 written statement, and stated he had not been forthright in making it. He admitted that he had been home on June 13 at approximately 2:20 p.m., explaining that he had family trouble. He testified that on June 14, he had first left his home earlier than 6:20 a.m., but had returned because he had forgotten his wallet. He then went to get fuel at the Kouts gas station, by which time he admitted that he was already running late. He stated that he arrived at work in Burns Harbor approximately twenty minutes late. Claimant further admitted that he was at home by approximately 1:48 p.m. on June 14. He acknowledged that he had told Davis he was going to La Porte, Indiana, but that he had not gone, again because of family issues. He stated that he did not follow up with Davis about what he was doing, but “made a mistake” because he panicked. He testified that on June 17, he again “made a mistake” and was not honest with Davis because he was stressed.

According to Claimant, his father, who ran a small farming operation, had cancer. Claimant was helping out by working until dark seven days each week. He also had a daughter with a respiratory illness and had been having sleepless nights giving her breathing treatments. He acknowledged that he should have spoken to Davis about the difficulties he was experiencing and stated that he had “messed up” and was sorry. Previously, he had a spotless record, and he testified that was trying to impress Davis, who was a new supervisor.

Claimant was notified by letter dated July 26, 2019 that he had been found guilty of the charges against him, and had been assessed the penalty of dismissal.

### **Contentions of the Parties**

The Carrier contends that the charges against Claimant were timely issued under Rule 24, § B.1, which requires charges to be issued within ten days of an incident or the Carrier’s first



knowledge of an incident. According to the Carrier, Supervisor Davis decided to begin investigating Claimant's actual work time on June 10, 2019, but did not have definite knowledge at that time of his misconduct. On June 13 and 14, he observed that Claimant's work truck was in his residential driveway during his scheduled shift. Only on June 17, however, did Davis become aware that Claimant was claiming pay for time he had not worked on June 13 and 14. Moreover, the Carrier argues that the charges against Claimant were amply proven by Davis and Supervisor Temple's observations, Claimant's lack of forthrightness during his June 17 meeting with Davis, and Claimant's own admissions at hearing. The Carrier submits that dismissal therefore was warranted.

The Organization argues that the Carrier failed to timely issue the charges against Claimant. Rather, according to the Organization, the Carrier was aware of what Claimant was doing on June 10, 2019, and the June 25 Notice of Investigation was thus untimely. The Organization further argues that dismissal was unduly harsh and excessive in the instant case. Claimant had a spotless record prior to June 2019, and should have been afforded progressive discipline.

### **Opinion**

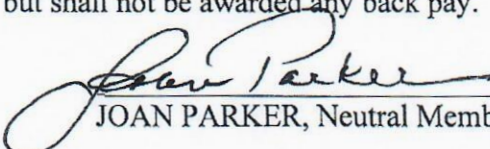
With regard to the procedural challenges raised by the Organization, the Board is not persuaded that the Carrier was aware of Claimant's misconduct as of June 10, 2019. Rather, as Supervisor Davis testified, on June 10 he only became aware of fuel charges that raised a question as to Claimant's whereabouts during his shift. Davis first investigated by observing Claimant on June 13. At that point, Davis did have firsthand knowledge that Claimant had left prior to the end of his shift. The Board thus finds that with respect to June 13, the Carrier did not timely file its charge against Claimant.

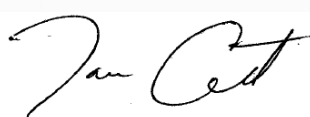
However, Davis credibly testified that he did not know for what hours Claimant was seeking pay for June 14 until he received Claimant's payroll information on June 17. Only then did he become aware that Claimant was seeking pay for time he had not worked on June 13 and 14. The Board thus finds that the charges related to Claimant's conduct on June 14 and his seeking pay for time not worked were not perfected until June 17. Therefore, the June 25 Notice of Investigation was timely issued with regard to those charges.

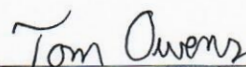
On the merits of the instant case, Claimant admitted that he was late for work on June 14, left early the same day, and put in a timesheet indicating that he worked a full shift on both June 13 and June 14. His misconduct thus was proven. Nevertheless, in light of Claimant's tenure, clean record, and apologetic attitude, the Board is persuaded that dismissal was too harsh a penalty for Claimant's misconduct. Rather, Claimant shall be given a second chance. He shall be reinstated, but without any back pay. Moreover, the Board stresses that if in future Claimant experiences personal problems that may affect his attendance, he must discuss those matters with his supervisor, rather than handle it in the improper manner he chose herein.

**Award:**

The claim is sustained in part. In accordance with the above Opinion, Claimant shall be reinstated, but shall not be awarded any back pay.

  
JOAN PARKER, Neutral Member

  
CARRIER MEMBER

  
ORGANIZATION MEMBER

DATED: 11/12/2020

DATED: 11/11/2020