

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 41011  
Docket No. MW-40875  
11-3-NRAB-00003-090130**

**The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(The Belt Railway Company of Chicago**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (immediate termination on October 9, 2007) imposed upon Mr. J. Silva on charges of alleged violation of The Belt Railway Company of Chicago (BRC) Roadway Worker Protection Program Rules 20.1, 20.4.1, 20.4.2, BRC Engineering Safety Rules E-1.1, E-1.2.3, E-1.2.4 and E-1.2.5 and BRC Safety Rule 30.12 while working in Commercial Yard on October 8, 2007 between 9:00 A.M. and 11:00 A.M., was arbitrary, capricious, unwarranted, on the basis of unproven charges and in violation of the Agreement (System File B-0744B-101/08-BMWE-001).**
- (2) As a consequence of the violation referred to in Part (1) above, ‘Claimant Silva must have his record cleared of the alleged offense and be immediately reinstated to his former position with all rights unimpaired and be compensated at his applicable rate for all time lost subsequent to his removal from service on October 9, 2007, as provided in Rule 47 of the CBA.’”**

**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.

The Claimant's employment as a Welder was terminated as noted in the Statement of Claim for multiple violations of applicable Rules. At the time of his termination, the Claimant had more than 13 years of service with the Carrier. His work record contained several prior disciplinary entries. Among them, he was disqualified as a Foreman in 2003 and received a 10-day suspension in 2006 for violating Engineering Department Safety Rules.

Our review of the record does not reveal any procedural irregularities of consequence. The Carrier's decision after the Investigation on October 16, 2007, was timely rendered by the Carrier's letter dated October 18, 2007. Interestingly, although the Claimant asserted in writing that he had not received the decision as of October 30, 2007, his own written appeal from the decision was dated one day earlier on October 29, 2007.

In addition, although the Carrier's copy of the decision letter to the Vice Chairman was misaddressed and had to be resent, it does not appear that this error constituted a violation of the Agreement as Rule 44 is written.

Finally, although each of the potential Rule violations was not individually discussed and mentioned by number during the Investigation, all were listed in the notice and all were introduced in evidence and marked by "sticky notes" on the respective pages of the Rule publications. The testimony and the video recording

that was received during the Investigation developed the facts of the Claimant's conduct and established the extent of the involvement of the various Rules.

Turning to the merits, our review of the record shows it to contain substantial evidence demonstrating the Claimant's failure to comply with the applicable requirements. As the person in charge of repairing a "pull-apart" on Track 6 at the south end of Commercial Yard, he failed to ensure that his Helper was wearing the proper safety vest. Although the Helper wore a dark appearing shirt in plain sight of the Claimant, the Claimant maintained he did not notice that the Helper did not have the bright and reflective vest on. The Claimant also fouled both main line tracks in the area by dragging his torch hoses over them. This fouling violated applicable Rules. The Claimant also allowed his Helper to foul tracks without providing required safety measures. Finally, the Claimant did not complete the required form for obtaining work authority involving the controlled main track.

Given the state of the record of evidence, when taken together with the Claimant's prior disciplinary record, we do not find any proper basis for disturbing the Carrier's discipline.

**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 20th day of July 2011.