

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41012
Docket No. MW-40876
11-3-NRAB-00003-090137**

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. E. Guzman on charges of alleged violation of The Belt Railway Company of Chicago (BRC) Roadway Worker Protection Program Rules 20.1, 20.6, and 20.6.1, BRC Engineering Safety Rules E-1.1, E-1.2.3, E-1.2.5, E-1.2.9 and E-1.3 and BRC Safety Rules 30.10 and 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-102/08-BMWE-102).**
- (2) As a consequence of the violation referred to in Part (1) above, “***Claimant Guzman 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 Helper was terminated as noted in the Statement of Claim for multiple violations of applicable Rules. At the time of his termination, the Claimant had approximately 12 years of service with the Carrier. His work record contained a prior disciplinary suspension for violating Engineering Safety Department Rules in 2005.

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. The Claimant's own written appeal from the decision was dated 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. The testimony, as well as the video recording that was received during the Investigation, developed the facts of the Claimant's conduct and established the extent to which that conduct violated 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 Rules. Although the Claimant's testimony contended that a safety briefing was conducted on the day in question, the video recording undermines the effectiveness of that briefing. It is undisputed that the Claimant was not wearing the required reflective vest at the time and did not put it on at any time after the briefing. In addition, he immediately went off and fouled several tracks without the required Flagman protection. Indeed, the video shows that he fouled Track 7 by walking back and forth in the middle of the track by himself without any Flagman protection present. The video also shows the Claimant swinging a stick around like a baseball bat with no apparent work-related purpose.

While the Claimant was not the person in charge of the two-person crew, the Rules require compliance by each individual railroad worker. Safety Rules are promulgated to achieve important safety objectives. Violations of those Rules are not to be treated lightly.

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.