

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41037
Docket No. MW-40821
11-3-NRAB-00003-090095**

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig when award was rendered.

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

PARTIES TO DISPUTE: (
(BNSF Railway Company (former Atchison, Topeka
(and Santa Fe Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (10-day record suspension) imposed upon Mr. M. Stieber for alleged failure to comply with Engineering Instructions G.3 Roles and Responsibilities in connection with charges of alleged failure to properly input time from the start of the capital expansion project under AFE A070458 through June 21, 2007 while working as foreman on TMGX0895 Mobile Maintenance Gang, was arbitrary, capricious, without merit and in violation of the Agreement [System File F-07-17D/13-07-0016(MW) ATS].**
- (2) As consequence of the violation referred to in Part (1) above, Claimant M. Stieber shall have the discipline removed from his record and he shall receive the remedy prescribed by the parties in Rule 13(f).”**

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.

Claimant M. S. Stieber was the assigned Foreman of Gang TMGX0895 at the time of this incident. The Claimant allegedly improperly reported to the Payroll and Accounting System (PARS) incorrect information charging all gang work to the operating budget. This gang was working on a capital expansion project (AFE A070458), and the Claimant input operating charges that allegedly skewed the budget. This error began in May and continued through June 21, 2007.

An audit of capital expansion reporting for budget purposes revealed the improper reporting. The Payroll Supervisor immediately reported the alleged improper reporting to the Claimant's Supervisor.

By letter dated June 28, 2007, the Carrier directed the Claimant to attend a formal Investigation on July 8, 2010:

“... to ascertain the facts and determine your responsibility, if any, in connection with your alleged failure to properly input time from the start of the capital expansion project under AFE A070458 through June 21, 2007, while working as Foreman on TMGX0895 Mobile Maintenance Gang.”

The Hearing took place on August 9, 2007, pursuant to which, in a letter dated August 31, the Claimant was notified that he was being assessed a ten-day record suspension as a result of his violation of BNSF Engineering Instructions G.3 - Roles And Responsibilities.

By letter dated October 26, 2007, the Organization appealed the decision specifying that the Carrier did not meet its burden of proof and contending that the discipline assessed was unwarranted and excessive. On November 20, General Manager R. Jackson denied the appeal. On December 13, the matter was appealed

by the Organization to General Director of Labor Relations William A. Osborn. On February 8, 2008, the appeal was denied. A conference was held, but the parties were unable to resolve the matter. The matter was then appealed to the Third Division.

According to the Organization, the discipline imposed upon the Claimant was unwarranted, harsh and excessive. It contends that the burden of proof in a discipline matter such as this is on the Carrier and that burden has not been met. It claims that (1) the Carrier has been arbitrary and capricious in its treatment of the Claimant (2) the Carrier abused its discretion and (3) the Carrier's determination to discipline the Claimant was based on inconclusive evidence, thus rendering the discipline harsh and excessive. It contends that the Claimant's reporting error was inadvertent and not intentional. Further, the Claimant immediately corrected the error once he was notified of such. The Organization claims that the Claimant was denied a fair and impartial Investigation because the Notice of Investigation was vague. It asserts that the Carrier should now be required to rescind the discipline and make the Claimant whole for all losses.

Conversely, the Carrier takes the position that it met its burden of proof. The Claimant was afforded a fair and impartial Hearing in accordance with the requirements of the Agreement. The Carrier contends that the Notice of Investigation was appropriate. According to the Carrier, a review of the transcript developed during the Hearing makes clear that the Claimant was guilty as charged. The evidence shows that the Claimant's reporting error could have serious implications. Based on the instant offense, the Claimant's ten-day record suspension was appropriate.

In discipline cases, the Board sits as an appellate forum. We do not weigh the evidence de novo. As such, our function is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to rule upon the question of whether there is substantial evidence to sustain a finding of guilty. If the question is decided in the affirmative, we are not warranted in disturbing the penalty unless we can say it appears from the record that the Carrier's actions were unjust, unreasonable or arbitrary, so as to constitute an abuse of the Carrier's discretion. (See Second Division Award 7325 and Third Division Award 16166.)

The Board has not found substantial evidence in the record to uphold the Carrier's position. The Carrier proved that the Claimant did make a clerical error in reporting. However, the record reflects that the error was minor and inadvertent. The Board concludes that no discipline is warranted for this error and, therefore overturns the ten-day record suspension. See Public Law Board No. 4244, Award 184.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of August 2011.