

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 42620
Docket No. MW-43076
17-3-NRAB-00003-150296

The Third Division consisted of the regular members and in addition Referee I. B. Helburn when award was rendered.

(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(BNSF Railway Company (Former Burlington Northern
(Railway Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [twenty (20) day record suspension and one (1) year review period] imposed upon Mr. K. Summers for alleged violation of MWOR 1.13 Reporting and Complying with Instructions and MWOR 1.3.1 Rules, Regulations, and Instructions in connection with charges of alleged ‘... failure to wear anti-slip footwear, as instructed, while you were observed walking towards the tracks at MP .5 on the Oneil subdivision, on or about 12:30 hours on February 12, 2014.’ was on the basis of unproven charges, arbitrary, capricious and in violation of the Agreement (System File C-14-D040-9/10-14-0177 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, the discipline assessed Claimant K. Summers shall be overturned and his record shall be cleared of any reference thereto.”

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 Carrier asserts that the Claimant's admission provides substantial evidence of his failure to wear anti-slip footwear, which put himself at risk. Discipline was properly assessed and there is no showing that alleged procedural defects prejudiced the Claimant's due process rights.

The Organization insists that the discipline was arbitrary and excessive because the Claimant made a reasoned decision not to wear anti-skid footwear while climbing metal rings on gondola car ladders. Furthermore, relevant rules are conflicting.

The Board does not find the relevant rules conflicting or the Claimant's decision reasoned. MOWOR 1.1.2 Alert and Attentive states that "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury." MOWSR S-1.5.3 Footing states in relevant part, "Be alert to all walkway conditions and adjust your actions to accommodate weather, time of day and grade." While the Organization may see a conflict in the rules set forth above, at the heart of both is the requirement to be alert to working conditions.

MOWSR S-21.2.4 Anti Slip Winter Footwear is specific in stating that "Employees will wear anti slip footwear when working in icy or snowy conditions. Only BNSF approved winter footwear will be worn." Roadmaster Beal described conditions mid-day on February 12, 2014 as 1-2" of snow, spotty ice and below-freezing temperature. The Claimant stated that there was about 1" of snow. He testified that his grapple truck was about 100'-300' from the gondola cars that he would have to peer into to ensure that he was getting the right material from the right car.

Claimant's explanation that he had not put on his slip-on safety cleats because they would make climbing the gondola car ladders unsafe is unpersuasive. He was faced with two sets of working conditions: walking across an expanse of snowy, icy ground and climbing the ladders. His decision to put the convenience ahead of not wearing the slip-on winter footwear at all over the inconvenience of wearing the winter footwear while walking to or between the gondola cars placed him in violation of the above-noted rules as well as MOWOR 1.13 Reporting and Complying with Instructions and MOWOR 1.3.1 Rules Regulations, and Instructions. The Board sees no reason to disturb the resulting 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 27th day of June 2017.