

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43364  
Docket No. MW-44342  
19-3-NRAB-00003-170419**

**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: (**

**(Dakota, Minnesota & Eastern Railroad Corporation**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. K. Mills by letter dated December 17, 2015 for alleged violation of GCOR 1.13 and GCOR 1.15 in connection with his alleged failure to report to his work assignment on Wednesday, November 25, 2015 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File J-1634D-401/8-0103 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant K. Mills shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and be compensated for all straight time, lump sum payments, overtime and out of pocket medical expenses.’ ”**

**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 was dismissed for failing to report for his work assignment on Wednesday, November 25, 2015. At the time of the incident, the Claimant had been an employee for approximately four years and work about two years, off and on, during that time. His work record showed three prior discipline entries in the nine months leading up to the instant matter. In February, the Claimant received a 5-day record suspension for an altercation at his layover lodging. He was absent from work on April 28<sup>th</sup>, which led to a 10-day record suspension. He was again absent from work on October 15<sup>th</sup>, which resulted in a 30-day record suspension with 15 days actually served. The Claimant accepted responsibility for all three of the prior infractions by signing waivers.

According to the record, the Claimant was on a crew that worked four 10-hour days that began at 0500 in the morning. While he worked some 16 hours on Monday, November 23<sup>rd</sup>, he worked only 10 hours on the day prior to his absence. He was released at 1500 that Tuesday. Nonetheless, he did not report for work on the next day and did not notify his supervisor of the circumstances until after noon that day.

The record also reflects that the Claimant's wife passed away in 2014. The Carrier had worked with him and his grief situation and had recommended that the Claimant seek assistance through the Employee Assistance Program. According to his testimony, the Claimant had received some counseling through the program.

Given the state of the record, we find it to contain substantial evidence in support of the Carrier's disciplinary action, which was imposed only after reasonable efforts had been made to correct his attendance problem. As a result, there is no proper basis for disturbing the carrier's decision. Accordingly, the claim must be denied.

**Form 1  
Page 3**

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**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 14th day of December 2018.**