

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43450
Docket No. MW-44179
19-3-NRAB-00003-170290**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

PARTIES TO DISPUTE: (

(Keolis Commuter Services, LLC

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension] imposed upon Claimant T. Melvin for alleged violation of >... Code of Conduct Rule 1 B Knowledge of the Rules, Rule 8 B Absence from Duty, Rule 8 B Prohibited Behaviors (vii), Rule 15 B Obeying Instructions, Directions and Orders and Rule 17 B Attending to Duties. In connection with charges that he allegedly ‘... failed to properly perform your snow removal duties at the South Attleboro and Attleboro train stations on February 5, 2016. ***’ was on the basis of unproven charges and in violation of the Agreement (Carrier’s File BMWE 01-2016 KLS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Melvin shall have his record cleared of all charges and he shall be compensated for all loss of pay and benefits.”**

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.

By notice dated March 1, 2016, the Claimant was directed to attend a formal investigation and hearing on charges that he allegedly had failed to properly perform snow removal duties and failed to properly notify the Radio Room when each platform was cleared on February 5, 2016. The investigation was conducted, after a postponement, on April 1, 2016. By letter dated April 8, 2016, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and that he was being assessed a five-day actual suspension. The Organization subsequently filed the instant claim on behalf of the Claimant, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant received a fair and impartial hearing, because clear and undisputed evidence establishes that the Claimant was guilty as charged, because there is no merit to the Organization's defenses, because the Claimant's failure created safety implications, and because the discipline imposed was appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proof, because there is no merit to the Carrier's defenses, and because the discipline imposed was inappropriate.

The parties being unable to resolve their dispute, this matter came before this Board.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier's Rules of Conduct 1, 8, 15, and 17 when he failed to properly clear and remove snow from a train platform on January 14, 2016, and again on February 5, 2016. The Claimant had performed that type of work in the past and

he simply failed to do his work on the dates in question. His failure to perform his job put passengers at risk on both days.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant was issued a five-day suspension for his wrongdoing in this case as were the other members of his crew. Given the seriousness of the offense and the fact that the discipline was relatively lenient but enough to make the Claimant realize what his responsibilities are, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the five-day suspension to the Claimant. Therefore, this claim must be denied.

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 1st day of March 2019.