

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43626  
Docket No. MW-44775  
19-3-NRAB-00003-180285**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

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

**PARTIES TO DISPUTE:** (

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

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

- (1) The discipline [thirty (30) day suspension and six (6) month disqualification as foreman] imposed on Mr. C. Workman by letter dated January 26, 2017 in connection with an incident that occurred on November 29, 2016 was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier’s File BMW-611D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Workman’s record shall be cleared of the charges leveled against him; all rights and benefits shall be restored and he shall be compensated for all lost wages.”**

**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.

On December 6, 2016, the Claimant, Foreman Clint Workman, was charged with violating the Carrier's Standards of Excellence pertaining to Safety, Attending to Duties and Trust & Honesty, Rule 319-C of the Roadway Worker Protection ("RWP") Program, and Cardinal Rule No. 10 (Failure to comply with applicable RWP procedures), including the following Specification:

**"At 1309 on November 29, 2016, you released your track authority (East Limits of CP190 –West Limits of CP180) without clearing up a C&S group consisting of (C&S Foreman Miller and Maintainer Keeton) that were under your track protection. After you realized your mistake, you were dishonest with the train dispatcher when you failed to inform him that you had failed to clear up all groups under your track protection."**

The charges are based on allegations that on November 29, 2016, the Claimant released track authority without insuring the safety of employees working in the protected area and that he failed to disclose his error to the train dispatcher. After a postponement, the hearing and investigation was held January 17, 2017. On January 26, 2017, the Claimant was notified that the Carrier found him guilty of the charges and was assessed a thirty-day suspension from service and six-month disqualification from his foreman position. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on July 5, 2017. The Organization rejected the Carrier's decision and filed its notice of intent with the Third Division. The claim is now properly before the Board for adjudication.

The Organization alleges that the Claimant was not afforded a fair and impartial hearing in violation of the Agreement. It argues that the hearing officer interfered with the Organization's ability to question witnesses, introduce evidence, review evidence in advance as required by the Agreement, and in general interfere with the due process elements necessary for a fair hearing.

The Board first addresses the Organization's claim of procedural error and finds that the record does not contain grounds to conclude that the Claimant did not receive a fair and impartial hearing and investigation. At the outset, we find that the Claimant's written statement contains an admission to improperly releasing track and time without insuring the safety of employees working in the protected area. Ample arbitral

authority supports the conclusion that where an admission of guilt is found in the record, procedural objections are deemed moot. Notwithstanding this applicable evidentiary standard, a reading of the hearing transcript indicates that the hearing officer often had a combative and disruptive approach in addressing the Organization's objections and line of questioning. However, despite the Organization's valiant argument, the record contains sufficient evidence that the hearing officer properly addressed the issues raised by the Claimant's representative whereupon he was able to effectively cross examine all witnesses, introduce relevant documents and review evidence introduced at the hearing.

A review of the merits establishes that the Carrier has met its burden of proof that the Claimant failed to insure the safety of employees under his supervision when he improperly released track authority. The testimony of Deputy Division Engineer Dickey McCarty, Signal Inspector Kevin Miller, and Signal Maintainer Chad Keeton, and the documentary evidence - including the Claimant's written statement - provide substantial evidence that the Claimant violated the Carrier's safety rules and did not inform the train dispatcher of his error. The Claimant's conduct created a hazardous work environment with potentially catastrophic consequences in clear violation of his duties.

Having found that the Carrier has met its burden of proof in support of the charges we review the penalty assessed. Arbitral authority in the industry establishes that leniency is reserved to the Carrier where there is no abuse of discretion. The record regarding the events of November 29, 2016 does not contain any evidence that the Carrier was biased in assessing a thirty-day suspension and a six-month disqualification. Legions of arbitration awards have found that violations of important safety rules that jeopardize the health and safety of employees can be grounds for severe discipline, up to and including dismissal. In addition, the Claimant has a less than satisfactory disciplinary record. There is no basis to conclude that the Carrier's decision to impose the suspension and disqualification is arbitrary or excessive.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant engaged improperly released track authority without first insuring the safety of employees under his supervision.

**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 17th day of May 2019.**