

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43659
Docket No. MW-44509
19-3-NRAB-00003-170669**

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: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day actual calendar day suspension] imposed upon Mr. T. Schmidt for alleged violation of CSX Transportation Operating Rule 104.3d following an investigation held on August 2, 2016 was on the basis of unproven charges and in violation of the Agreement (System File 2016-210650 CSX).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Schmidt’s record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.”**

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 charged with intentionally causing a backhoe tire to be cut by a switch point.

The Board's review of the record does not reveal any procedural deficiencies of significance. On the merits, the entire basis of the Carrier's discipline turns on the statement of another employee who overheard the Claimant speaking to a third employee two days after the incident. The employee testified at the investigation. He verified his statement and confirmed what he heard the Claimant say to the other employee word for word. He overheard the Claimant say he "... busted their backhoe tire on purpose ..." in connection with being required to operate the machine without air conditioning.

In the overall context of the evidentiary record on the property, the Board finds the employee's statement and testimony to constitute substantial evidence in support of the Carrier's disciplinary decision. The claim, therefore, 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 17th day of May 2019.