

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43673  
Docket No. MW-44920  
19-3-NRAB-00003-180392**

**The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(Louisiana and North West Railroad Company**

**STATEMENT OF CLAIM:**

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

- (1) The Carrier’s decision to dismiss Mr. C. Heard from service for alleged failure to restore the Pass Track for main track movement on April 4, 2017 was arbitrary, excessive and unwarranted (System File L&NW700SN17D/ PRLNW1702 LNW).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Heard shall ‘... be allowed to return to work with all vacation and seniority rights unimpaired, that the charge and discipline A Dismissal, issued per letter of April 7, 2017 from AVP Safety and Compliance David Bevins, resultant investigation held April 19, 2017, be removed from his personal record, that he be made whole for all time lost due to discipline issued in connection with these charges, and that he be reimbursed for any additional expenses, incurred that would have normally been covered by Carrier 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.

After investigation held April 19, 2017 and by letter dated April 27, 2017, the Claimant – an employee in the Carrier’s service for approximately 14 years – was dismissed for failing to restore track for main track movement at MP 23 on April 4, 2017.

The Claimant admitted to the charged misconduct. Tr. 18-19, 23, 33. Leaving the track lined for the siding and unlocked as the Claimant did posed a serious risk of danger to train crews operating on the main track. Substantial evidence therefore supports the Carrier’s position that the Claimant engaged in the charged misconduct.

Dismissal was not arbitrary. Just dating back to January 2016, the Claimant has accumulated a lengthy prior discipline history (10 instances of misconduct cited by the Carrier). See Organization Exhibit A-1.

This claim will 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 18th day of June 2019.