

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43676
Docket No. MW-45155
19-3-NRAB-00003-180685**

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

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

PARTIES TO DISPUTE: (
(Iowa Interstate Railroad

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [five (5) day suspension and one (1) day of remedial training] imposed upon Mr. R. Whisenand, by letter dated September 7, 2017, for violation of multiple Carrier rules in connection with his alleged failure to properly secure the tamper heads and failure to report an incident on August 8, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File IIR-2018-D040-3 IIS).**
- (2) The claim* as appealed under date of September 25, 2017 shall be allowed as presented because the Carrier failed to schedule and hold a conference to discuss the matter, in accordance with Rule 19G, prior to issuing a denial of the appeal.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant R. Whisenand shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.**

***The initial letter of claim will be reproduced within our initial submission.”**

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 August 28, 2017 and by letter dated September 7, 2017, the Claimant – an employee in the Carrier's service for approximately four and one-half years – was issued a five-day suspension with one day remedial training for improper operation of a tamper on August 8, 2017 and failing to report the incident.

On August 8, 2017, the Claimant was assigned as a machine operator. The record sufficiently shows that on that date, Claimant failed to secure the tampering heads of his Mark III Tamper which caused the left side of the equipment to be dragged across the Mill Street Road crossing.

Substantial evidence shows that the Claimant engaged in the charged misconduct.

Under the circumstances, a five-day suspension and one-day retraining was not arbitrary.

The Organization's argument that the Carrier improperly denied the claim before the appeal conference does not change the result.

The Organization appealed by letter dated September 25, 2017. Organization Exhibit A-2. Before the conference was held, the Carrier denied the appeal by letter dated October 18, 2017. Organization Exhibit A-3. The conference was held on October 31, 2017. By letter dated November 20, 2017 (after the conference), the

Carrier wrote that its “... previous denial was reaffirmed.” Organization Exhibit A-4.

Rule 19(G) provides [emphasis added]:

“G. Any appeal of the discipline assessed will be made by the Employee or his representative to the highest officer designated by the Carrier (‘Appeal Officer’) within 30 days after the date of the discipline letter. The parties will schedule a conference to discuss the matter within 30 days of the date of the appeal. The Appeal Officer will issue a written decision within 30 days after the date of the conference. If the appeal is denied, the reason for denial will be given. If no decision is issued within 30 days, the appeal will be allowed as presented.”

In Third Division Award 43674, this Board held:

“... On the procedural argument raised by the Organization, the Carrier issued denials both before and after the conference and because a denial was also issued after the conference, technical compliance with Rule 19(G) was achieved. However, for the future and to avoid unnecessary disagreements between the parties, Rule 19(G) should be interpreted as it reads – i.e., that “[t]he Appeal Officer will issue a written decision within 30 days after the date of the conference.” Issuance of denials before the conference will not be considered to be in conformance with the rule.”

That same holding applies to this case.

AWARD

Claim denied.

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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.