

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43678  
Docket No. MW-45157  
19-3-NRAB-00003-180687**

**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: (**  
**(Iowa Interstate Railroad**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. R. Whisenand, by letter dated November 3, 2017, for violation of multiple Carrier rules in connection with his alleged failure to properly protect Carrier equipment on October 16, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File IIR-2018-D070-1 IIS).**
- (2) The claim\* as appealed under date of November 15, 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 be reinstated to service with seniority and benefits unimpaired, 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.

The Claimant is the same employee involved in Third Division Awards 43676 and 43677. In this case, the record shows that the Claimant left maintenance of way equipment unprotected when he left equipment unlocked at the end of his tour of duty. As a result, the Claimant was dismissed.

Substantial evidence shows that the Claimant engaged in the charged misconduct. The Claimant admitted that on October 16, 2017, as charged, he left his machine unprotected on the Booneville Elevator Track at Booneville, Iowa with the switch unlocked and misaligned and the derail unlocked in the off position. Tr. 21-29.

Given the results in Third Division Award 43676 which upheld a five-day suspension issued to the Claimant and Third Division Award 43677 which upheld a 20-day suspension issued to the Claimant, dismissal in this matter was progressive and not arbitrary.

The Organization again argues that the Carrier improperly denied the claim before the appeal conference. The record shows that on November 15, 2017, the Organization appealed the Carrier's November 3, 2017 assessment of discipline (Organization Exhibit A-2); on December 4, 2017, the Carrier denied the appeal (Organization Exhibit A-3); conference was held on December 11, 2017 and on December 15, 2017, the Carrier reaffirmed its prior denial (Organization Exhibit A-4).

For reasons discussed in Third Division Awards 43676 and 43677, that argument does not change the result for these cases.

As this Board stated in Third Division Award 43674:

“... 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.

**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.