

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43684
Docket No. MW-44926
19-3-NRAB-00003-180401**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

- “(1) The discipline [standard formal reprimand and one (1) year review period] imposed upon Mr. C. Cyr, by letter dated December 9, 2016, for alleged violation of General Code of Operating Rule (GCOR) 1.19 Care of Property was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-17-D040-8/10-17-0117 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall remove the discipline from Claimant C. Cyr's record in accordance with Rule 40 of the Agreement.”**

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 operating his machine when a piece of ballast broke a window in the machine. As a result, the Claimant was charged with failure to properly operate equipment, resulting in damage. The Carrier notes he admitted to the damage and concludes the discipline must be upheld.

In the Organization's assessment, the fact that a window was broken does not establish any faulty equipment operation or rule violation. The Claimant admitted there was a way to keep the accident from happening if he exited his machine every single time he raises the outriggers. The Carrier interprets this as an admission of guilt. However, the Organization maintains there is no requirement that the machine operator do this. It is noted that Roadmaster Paz testified that the Claimant did not improperly operate his machine.

In order to establish that an employee has failed to properly operate equipment, there must be evidence that the employee was guilty of some definable action or inaction which is consistently expected in the operation of the equipment involved. The evidence falls short here. There is no consistent, articulated expectation that the Claimant exit his machine every time he raises the outriggers. To insist on this would require an assessment by the Carrier that any loss of efficiency in doing so is warranted due to the likelihood of damage. Nothing of the sort is in evidence here. Even the Claimant's Roadmaster acknowledged that the Claimant was operating his machine properly. Given this evidence, we do not find substantial evidence of the alleged offense.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 18th day of June 2019.