

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43685  
Docket No. MW-44987  
19-3-NRAB-00003-180481**

**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:**

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

- (1) The discipline (dismissal) imposed upon Mr. R. Rosenbaum by letter dated January 26, 2017 for alleged violation of MWSR 12.5 and MWSR 14.1.2 in connection with his alleged failure to wear a seatbelt on January 5, 2017 while operating a Carrier vehicle was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-1 7-D070-2/10-17-0137 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Rosenbaum shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses and 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.**

**The facts of this case are largely undisputed. The Claimant had parked his truck inside the shop because of cold weather. Even so, he had trouble starting his truck the next morning and had to use a charger on the battery. At the time, he was last in and was blocking all the section and welding trucks needing to leave for the day. He finally got his truck started, backed out of the shop and parked immediately outside. He was seen doing this without his seatbelt on and has admitted to the lapse.**

**The Carrier contends dismissal in this case is warranted. It notes this was the Claimant's third serious violation during an active review period. The Claimant signed a waiver accepting a Level-S Record Suspension with a 12-month review period on April 27, 2016 for failing to activate his HLCS thumbwheel (a safety precaution). His disciplinary history is as follows:**

**“1999 Formal Reprimand  
2007 10-day Record Suspension  
2010 Formal Reprimand  
2012 30-day Record Suspension  
2016 Formal Reprimand (March)  
2016 30-day Record Suspension (April)  
2016 30-day Record Suspension (August)”**

**The Carrier argues that there should be no third bite at the safety apple. It maintains the Claimant has been disciplined for safety violations before and has had the full benefit of progressive discipline. It contends dismissal was proper.**

**The Organization finds the discipline excessive and unreasonable because it was not proportional to the nature of the offense. It notes the Claimant was hired in 1977 and has worked for the railroad all his working life. It argues the appropriate penalty in these circumstances is a formal reprimand, and distinguishes the case where the employee is going down a public highway at 60 miles an hour with no seat belt.**

The Board is tremendously sensitive to the value of a long term employee whose life has been spent with the Carrier. However, the Board is also deeply attuned to the significance of progressive discipline and the opportunity it offers employees to learn from their mistakes. In this case, the Claimant has had multiple opportunities to assimilate the importance of the Carrier's safety rules and to appreciate the protection they offer. His last three disciplinary actions were for exceeding speed limits, failure to activate the HLCS system and exceeding track authority.

That said, his safety violation in this instance is distinctively minimal in character. He did not drive on a public highway. Rather, he moved a very short distance without going on a public street or gaining any significant speed. The nature of the offense does not persuade the Board that this employee exhibited such indifference to safety regulations that he should lose his job of nearly 40 years. Taking the entirety of the mitigating circumstances into consideration, the Board finds a Level S designation in this instance to be unreasonable. However, under the particular and rather unique circumstances of the case, a three-year review period is warranted in view of the Claimant's history of safety violations.

The Claimant shall be reinstated without back pay or compensation for any lost benefits. His 30-day Record Suspension shall be reduced to Standard Formal Reprimand with a three-year review period to begin on the day of his reinstatement.

**AWARD**

Claim sustained in accordance with the Findings.

**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.