

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43694
Docket No. MW-45130
19-3-NRAB-00003-180593**

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 imposed upon Messrs. S. Carabajal [thirty (30) day record suspension with a one (1) year review period], L. Kennedy [thirty (30) day record suspension with a one (1) year review period] and T. Cline [thirty (30) day record suspension with a three (3) year review period] by letters dated March 10, 2017 for alleged violation of MWOR's 6.19, 11.3 and 6.14 in connection with their alleged fouling the main track without proper authority on January 30, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-17-D040-16/10-17-0178 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants S. Carabajal, L. Kennedy and T. Cline shall have the discipline removed from their records in accordance with Rule 40."**

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.

On January 30, 2017 the surfacing gang signal supervisor and the structure supervisor were operations testing. They approached Foreman Cline in his truck and inquired about protection. Cline advised they were protected under train coordination, that is, they talked to the two trains that go through there. Because the area was under restricted limits, the Carrier determined that they needed flag protection under Rule 16.19 and 11.3. Each employee received a Level S record suspension, Carabajal and Kennedy's had a one-year review period, and Cline's had a three-year review period. During the investigation Carabajal admitted they did not have flag protection.

The Organization argues that in that particular area, train coordination has been the accepted way of achieving protection for quite some time. It was a dead-end track so trains could not come from behind. In its view, the supervisor did not understand what the proper protection was supposed to be. It maintains the Carrier failed to present any evidence that refuted the Claimants' past practice of using train coordination at the location where this dispute took place. It concludes the Carrier has not met its burden of proof.

It is uncontested that the Claimants were operating within restricted limits, and that under Rule 6.14 regarding restricted limits, they functioned under Rule 6.19 (flag protection). It is also uncontested that they were out of compliance with the Rule 6.19 requirements.

In our assessment the rules are clear, and the Claimants were responsible for knowing the rules and abiding by them. The fact that a violation is longstanding in no way alters its essential character as a violation.

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.