

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43971  
Docket No. MW-45248  
20-3-NRAB-00003-190031**

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

**(Brotherhood of Maintenance of Way Employes 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 [thirty (30) day record suspension and a three (3) year review period] imposed upon Mr. R. Frankhouser and [thirty (30) day record suspension and one (1) year review period imposed upon Mr. M. Zufall, by letters dated May 11, 2017, for violation of MWOR 6.3.1 in connection with their alleged actions of exceeding the limits of their authority was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File S-P-2144-G/11-17-0320 & 11-17-0388 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimants R. Frankhouser and M. Zufall shall have their records cleared of the charges leveled against them and they 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.**

**Claimants were operating a snow plow on the date in question, and they had obtained numerous track authorities. At one point, the Claimants' computer "browned out," meaning the track authorities were no longer visible on the computer screen. Claimants mistakenly moved onto trackage designated as the main track. The Carrier determined that they had fouled the track and assessed the above described discipline.**

**The Organization contests the discipline as unwarranted and improper. It notes Claimants were never endangered since the section of main track involved was an "island" due to the fact Claimants held authority that precluded train movement onto the track segment from all directions. The Organization contends that under these facts, the discipline imposed was unreasonably harsh and cannot be sustained. The Organization further maintains there are other significant mitigating circumstances in the case: the dispatcher aligned the switch for movement to a track which the Claimant did not possess track and time, the Carrier has a Risk Reduction Education program which they refused to utilize; and Claimant Frankhouser had questioned Zufall and was assured they in fact had authority.**

**The Carrier explains the discrepancy between the two employees' discipline, stating that Frankhouser was assessed a Level S 30 Day Record Suspension, with three-year review period in consideration of his history of previous discipline over the past three years. Zufall received a Level S 30 Day Record Suspension with one-year review period based on his history of being discipline free in the previous three years. The Carrier notes that even with a browned out computer, Claimants still had .pdf representations of their authority available to them. More important in the Carrier's view is the fact that the brown out constituted a changed condition, meaning employees were required to stop work and re-brief. While the dispatcher could have been more alert to the conditions, it was Zufall and Frankhouser who bore primary responsibility for verifying their authority limits, particularly when they lost visual reference. The Carrier concludes that there are no mitigating circumstances in the case.**

We find the Carrier has met its burden in this case. Claimants' failure to stop and verify track authority after a computer brown out does indeed constitute a neglect of duty, placing both Claimants at risk of fouling track, a risk which became reality. Neither the actions of the dispatcher nor the reassurance from Zufall alter or mitigate this finding. We are not persuaded that the "island" nature of the track in question is adequate to constitute a mitigating circumstance. Claimants knew they needed authority to be there regardless of the status of surrounding track, and it is this inadvertence that is the misfeasance warranting corrective action. Given the facts of this case, we find the Carrier's emphasis on safety to be reasonable and warranted. We find the Carrier to be within its rights to determine that the prohibition against fouling track was violated. In addition, its distinction in the disciplinary records of the two employees was reasonable.

**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 5th day of March 2020.**