

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43998
Docket No. MW-45377
20-3-NRAB-00003-190196**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s discipline [twenty (20) day suspension to be served without pay] of Mr. B. Schrader, issued by letter dated September 29, 2017, in connection with allegations that he demonstrated misconduct toward a Company Officer on July 29, 2017 was unjust and in violation of the Agreement (System File RI-1734D-805/USA-BMWED_DM&E-2018-00002 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Schrader shall have the discipline removed from his record and be compensated for all time lost which includes any days and overtime missed as a result of the improper suspension.”**

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.

This is a companion case with Docket No. 45376. In a letter dated August 8, 2017, the Carrier sent Claimant Brian Schrader a notice of investigation requiring him to appear for a formal hearing for the following purpose:

“... to determine the facts and circumstances and to place responsibility, if any in connection with your alleged demonstrating misconduct toward a Company Officer on July 29th, 2017. . . .”

An investigation was held on August 30, 2017. Following the investigation, by letter dated September 29, 2017, the Carrier notified the Claimant that he had been found guilty as charged and was assessed the penalty of a 20-day actual suspension (to be served following his 20-day suspension imposed in the prior Investigation (cited in Docket No. 45376). The Organization filed a claim on Mr. Schrader's behalf on November 14, 2017. That claim was denied by the Carrier on January 5, 2018. The Organization appealed that denial and the matter was progressed in accordance with the Parties' Agreement. It is therefore properly before the Board.

The Carrier contends that the Claimant was found sleeping and, when awakened, was quarrelsome with the manager who discovered him. It notes that the Claimant admitted raising his arms and speaking loudly at the time. The Carrier further points out that the Claimant was well aware of the Carrier's rules of conduct and knew his behavior at the time was unacceptable. It asks that the claim be denied.

The Organization insists that the Claimant was not quarrelsome. Rather, he was startled at being accused of sleeping on duty, reasonably became upset, and denied the charge to the Carrier officer. Further, a witness to the event testified credibly on the record that the Claimant was not discourteous or unreasonably quarrelsome. It asks, therefore that the claim be sustained.

The Board has thoroughly reviewed the testimony on the record of investigation in this matter, and we do not find that the Carrier has met its burden of persuasion in this instance. There are no confirming witnesses to suggest that the Claimant was argumentative beyond being startled and upset at being accused of sleeping at his computer. In light of that evidence, and in view of the Claimant's exemplary discipline record, we find no basis for upholding the Carrier's additional assessment of 20 days' actual suspension. Accordingly, the instant claim is sustained.

AWARD

Claim sustained.

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 5th day of March 2020.