

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44200
Docket No. MW-45505
20-3-NRAB-00003-190321**

The Third Division consisted of the regular members and in addition Referee James M. Darby when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Carrier’s discipline [five (5) day suspension to be served without pay] of Mr. C. Asmussen, issued by letter dated February 23, 2018, in connection with allegations that he was not engaged in non-productive work while waiting for track time on January 11, 2018 was unjust and in violation of the Agreement (System File RI-1834D-804/USA-BMWED_DM&E-2018-001177 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Asmussen 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.

On January 15, 2018, the Carrier informed the Claimant he was charged with violating the Dressed and Ready Policy by engaging in non-productive work while waiting for track time on January 11, 2018. At the investigation held on January 25, 2018, the evidence showed that the Claimant and two other employees used a Carrier vehicle during their lunch period to get something to eat. While at lunch the keys to the vehicle were mistakenly locked in the vehicle. This resulted in the Claimant being delayed in his return to the work site. The Carrier determined that the Claimant violated GCOR 1.13 – Reporting and Complying with Instructions; CP – Dressed and Ready Policy; and ES Safety Book – Core #1 – Rights and Responsibilities by returning late from lunch and using a Carrier vehicle for personal use. It assessed him discipline of 5-days without pay.

Based on the foregoing, the Board concludes that the record contains substantial evidence to sustain the charges relating to the Claimant returning to the work site in an untimely manner. However, there is insufficient evidence to conclude that the personal use of the Carrier vehicle was in violation of the cited rules at the time of this incident. Accordingly, the discipline shall be reduced to a 5-day record suspension only and the Claimant shall be reimbursed accordingly.

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 30th day of September 2020.