

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44204  
Docket No. MW-45501  
20-3-NRAB-00003-190317**

**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: (**

**(Soo Line Railroad Company**

**STATEMENT OF CLAIM:**

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

**(1) The discipline [five (5) day suspension] imposed upon Ms. L. Brisbois, by letter dated December 14, 2017, for alleged violation of GCOR 1.13 - Reporting and Complying with Instructions and GCOR 1.15 - Duty - Reporting or Absence in connection with alleged failure to stay until the end of shift on October 12, 2017 was on the basis of unproven charges, arbitrary and excessive (System File D-117-17-380-42/Brisbois 5 day CMP)....”**

**(2) As a consequence of the violation referred to in Part (1) above, the discipline imposed upon Claimant L. Brisbois shall:**

**‘... be set aside, and Claimant shall be made whole for all time, financial, and/or benefits lost as a result of this suspension. Any benefits lost, including but not limited to vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored. Restitution for financial losses as a result of the violation shall include compensation for:**

- 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of suspension from service (this amount is not reduced by any**

outside earnings obtained by the Claimant while wrongfully suspended);

- 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement for the time Claimant was out of service;
- 3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time she was suspended from service, or for overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended from service;
- 4) health, dental, and vision care insurance premiums, deductibles, and co-pays that Claimant may not have paid had she not been unjustly suspended.

In addition, all notations of this 5-day actual suspension should be removed from all Carrier records, including Claimant's personal record.'"

**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 October 12, 2017, Manager of Production Jason Boughton arrived at the Claimant's assigned worksite in Kensal, ND, at approximately 1500 and found the Claimant absent prior to the end of the work day. The Claimant's work shift is from

0600-1600 Monday-Thursday with Friday, Saturday and Sunday as rest days. As a result, by letter dated October 20, 2017, the Claimant was directed to attend an investigation to address whether she violated GCOR 1.13 - Reporting and Complying with Instructions, and GCOR 1.15 - Duty- Reporting or Absence. The hearing was conducted and completed on December 1, 2017. The evidence showed that 25 other employees also departed the work site early that same day. All 25 admitted guilt and signed waivers, except the Claimant. The Carrier concluded that the transcript and record supported the charge and as a result, the Claimant was suspended from service for five (5) days.

The Organization's procedural contention that the Claimant was denied a fair hearing due to the impartiality of the hearing officer cannot succeed. The fact that the hearing officer referred to all the other involved employees having signed waivers did not show bias, but was merely a statement of fact. There is no evidence demonstrating that the Claimant was prejudiced in any way by the Carrier's procedural handling of the investigation.

Turning to the merits, the Claimant acknowledged that in order to leave the work site prior to the end of the work shift an employee must receive express permission from management to do so. Such authority cannot be implied. Without question, the record is clear that the Claimant never received express permission to leave the work site early on the day in question. Thus, there is substantial evidence herein to support the charges that the Claimant violated GCORs 1.13 and 1.15.

Accordingly, the claim must be denied.

**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 30th day of September 2020.