

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44205
Docket No. MW-45502
20-3-NRAB-00003-190318**

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

**(Brotherhood of Maintenance of Way Employees 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 [twenty (20) day suspension with ten (10) days to be served without pay and ten (10) days deferred] imposed upon Ms. L. Brisbois, by letter dated May 7, 2018, for alleged violation of Safety Handbook CORE Rule #7 Vehicles, Materials, Equipment and Tools and Safety Handbook E-2 Vehicles Used for Company Business in connection with alleged failure to properly do a daily inspection by not checking the engine oil of CP Unit D02821 prior to operating it on March 22, 2018 was on the basis of unproven charges, arbitrary and excessive (System File D-27-18-445-07/2018-002636 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; and
- 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 twenty (20) day suspension with ten (10) days served and ten (10) days deferred 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 March 23, 2018, the Carrier informed the Claimant she was charged with failing to properly perform a daily inspection including failing to check the engine oil of CP unit D02821. At the investigation held on April 20, 2018, the evidence showed that on March 21, 2018, supervisors placed service tags on various equipment to ensure employees were checking fluids prior to operating the equipment. The next day the Carrier conduct efficiency tests and discovered that the Claimant failed to return the

service tag after operating her equipment. The evidence also revealed that when confronted that day with this omission the Claimant admitted she failed to check the vehicle fluids even though she knew she was required to do so and had recorded in the log book that such a check was conducted.

As a result, the Carrier determined that the Claimant was in violation of Safety Handbook Core Rule #7 – “Vehicles, Materials, Equipment” and Tools & Safety Handbook E-2 – “Vehicles Used for Company Business.” It imposed a 20-day suspension (10-day actual with time served) on the Claimant.

Based on the foregoing, the Board concludes that there is substantial evidence to support the instant charges. The Claimant admitted to the violation and the rules at issue are clearly reasonable to ensure that the Carrier’s equipment is properly maintained and preserved. The Organization’s contention that the applicable rules do not require that the fluids be checked *prior* to operating the same is not supported by the language of the rules, which require that vehicles be inspected before their use. The Organization’s other contentions simply amount to invalid excuses for failing to follow the applicable rules. Furthermore, there is no evidence in the record demonstrating that the Carrier engaged in a targeted enforcement of the rules.

Accordingly, for all these reasons the claim is 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.