

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44349
Docket No. MW-45682
21-3-NRAB-00003-190661**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK) –
(Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspension] imposed on Mr. E. Laird, by letter dated July 6, 2018, when on April 24, 2018 he allegedly allowed the work group to work unsafely by not having proper RWP protection in place to complete their assignments was without just cause, excessive and in violation of the Agreement (System File NEC-BMWE-SD-5688D AMT).**
- (2) As a consequence of the Carrier’s violation referred to in Part (1) above, Claimant E. Laird must have his discipline reduced to reflect he was not in violation of the allegation referred to in Part (1) above.”**

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.

The Claimant had established and held seniority within the Carrier's Maintenance of Way Department. On the date giving rise to this dispute, he was assigned and working as a foreman. On April 24, 2018, the Claimant accepted an upgrade to Foreman, making him the Road Worker in Charge ("RWIC"). The Claimant called the dispatcher to return foul time and learned that he did not have protection on Track #2. Therefore, the Claimant and his gang had been working under the assumption that they had protection that they did not have.

Upon investigation, the Carrier also learned that the Claimant did not have qualification for the upgrade and was not logging his foul time. On May 7, 2018, the Claimant was given notice of an investigation in connection with the following charge:

"You are hereby directed to appear for a formal investigation, as indicated. This notice is issued in connection with the alleged incident outlined.

On Tuesday April 24, 2018 at approximately 3:20 PM, Track Forman Edward Laird was the employee in charge of a gang performing work on track # 6 in Old Saybrook CT, MP 105.6. At this time Foreman Laird called the dispatcher to give back foul time that he didn't have on track #2 between Saybrook and View Interlockings. The dispatcher, questioning this transmission, discovered that Foreman Laird had not been granted foul time after 2:10 PM. Upon investigation, it was further discovered that Foreman Laird negligently allowed his Physical Characteristics to expire; and he was not keeping the required foul log for documentation of foul time. As a result of Foreman Laird's negligence, the work group (gang) unsafely did not have proper RWP protection in place to complete their work assignment."

After a formal investigation on June 27, 2018, the Claimant was found in violation of Amtrak's "Standards of Excellence" (Safety, Attending To Duties and Professional and Personal Conduct); NORAC B, N, S, C-S6, 997; Amtrak RWP 323, 353; and

Cardinal Rules for applicable RWP procedures. The Claimant was assessed a thirty-day suspension.

By letter dated July 18, 2018, the Organization appealed the assessed discipline. By letter dated September 20, 2018, the Carrier denied the Organization's appeal. The parties were unable to resolve the claim on-property, so it is now properly before this Board for final adjudication.

The Carrier contends that it has proven with substantial evidence that the Claimant was guilty of the violations. The Carrier points out that the most serious violation was that the Claimant believed that he and the gang were protected when they were not. In addition, the Carrier contends that it has shown that the Claimant allowed his qualifications to expire and failed to keep a log book.

The Carrier contends that the level of discipline imposed is neither arbitrary nor excessive and is proportionate to the seriousness of the violations.

The Organization contends that the Carrier has failed to prove that the work group did not have proper protection to complete their work assignments. The Organization concedes that the Claimant did not deny the allegations against him.

The Organization contends that the Claimant was disciplined more harshly than other employees who have committed similar violations. The Organization contends that, as a nine-year employee with no prior discipline, the Claimant should have received the opportunity to sign a waiver, as other employees had.

The Carrier has shown with substantial evidence that the violations occurred as charged. While the Organization does not challenge those findings, it does argue that the penalty imposed, a thirty-day suspension, was excessive, especially as similarly situated employees were permitted to sign a waiver.

When the Organization can show that similarly situated employees committed similar transgressions but received lesser penalties, this Board will necessarily consider that contention. It is well-accepted, however, that similar transgressions need not be treated uniformly when relevant considerations make the situations dissimilar.

While the Organization offered examples of other instances where employees were given lesser penalties for some of the same rule violations, a careful review reveals that none of the employees were guilty of all the same rule violations. In other words, there was a reasonable basis for treating the Claimant differently. As a result,

this Board finds that none of the offered cases are similar enough to the instant situation to permit a conclusion that the Claimant was subjected to improper disparate treatment.

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 6th day of January 2021.