

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44502  
Docket No. MW-46069  
21-3-NRAB-00003-200290**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. C. Guthrie, by letter dated December 21, 2018, in connection with allegations that he fouled track on the Birmingham Subdivision between crossover Palos and NBCS South Siding switch Adamsville before briefing and documenting joint authority of all work groups while working as a track supervisor on November 19, 2018 was arbitrary, excessive and unwarranted (System File 2033-SLI 3N1-18136/ 14-19-0053 BNS).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Guthrie shall be reinstated to service with seniority rights and benefits restored and ‘\*\*\* be made whole for all financial losses as result of the violation, including 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 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 that became effective while Claimant was out of service. 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended. 4) health,**

dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed from service commencing December 21, 2018, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.”

**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.

***Factual Background***

On the dates giving rise to this dispute, the Claimant C. Guthrie was assigned and working as a track supervisor. On November 19, 2018, the Claimant was humping between crossover Palos and NBCS South Siding switch Adamsville on the Birmingham Subdivision. He received track authority but did not notice that it was joint with employee T. Parson. He did not communicate with Parson and exceeded his track authority. At the time, he was under a review period for a Level S Suspension. As a result, he was terminated.

Rule 13 of the Agreement states as follows, in pertinent part:

**RULE 13 – DISCIPLINE**

13a – Investigations. An employee in service sixty (60) days or more will not be disciplined or dismissed until after a fair and impartial investigation has been held. Such investigation shall be set promptly to be held not later than fifteen (15) days from the date of the occurrence, except that personal conduct cases will be subject to the fifteen (15) day

limit from the date information is obtained by an officer of the Company (excluding employees of the Security Department) and except as provided in Section B of this rule A decision shall be rendered within thirty (30) days following the investigation, and written notice thereof will be given the employee, with copy to local organization's representative. If decision results in suspension or dismissal, it shall become effective as promptly as necessary relief can be furnished, but in no case more than five (5) calendar days after notice of such decision to the employee. If not effected within five (5) calendar days, or if employee is called back to service prior to completion of suspension period, any unserved portion of the suspension period shall be canceled. \* \* \*

13(c) - Notice of investigation. At least five (5) days advance written notice of the investigation shall be given the employee and the appropriate local organization representative, in order that the employee may arrange for representation by a duly authorized representative or an employee of his choice, and for presence of necessary witnesses he may desire. The notice must specify the charges for which investigation is being held. Investigation shall be held, as far as practicable, at the headquarters of the employee involved. \* \* \*

13(f) – Employees Unjustly Suspended or Dismissed. If after investigation it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with seniority rights unimpaired and compensated for the net wage loss, if any, resulting from said suspension or dismissal.

13(g) – Company's Right to Reinstatement on a Leniency Basis. The right of the Carrier to reinstate, on a leniency basis, and restore the seniority of an employee who has been dismissed is recognized; provided such right is exercised within one (1) year from the date of dismissal. The General Chairman will be notified when employees are so reinstated.

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**13(h) – Reinstating Employees on a Leniency Basis.** When an employee who has been dismissed from service while employed in one of the groups and classes set forth in Rule 2 – (a) of this Agreement is reinstated under Rule 13 – (g), he may, at the discretion of the Carrier, he either (1) returned to his former position, provided it has not been abolished or taken by a senior employee in the exercise of seniority rights in which case he will be permitted to exercise seniority rights in the same manner as of displaced in force reduction; or (2) permitted only to displace the junior regularly assigned employee of his class on the seniority district; or (3) restricted to a lower class in which he holds seniority by being permitted to displace the junior employee in such lower class. Employees displaced by the return of the employee reinstated on a leniency basis under (1) will be permitted to return to their former position, provided it has not been abolished or taken by a senior employee in the exercise of seniority rights in which case he will be permitted to exercise “seniority rights in the same manner as if displaced in force reduction. Employees displaced under the operation of (2) or (3) will be permitted to exercise their seniority rights in the same manner as if displaced in force reduction.

### ***Position of Organization***

In the Organization’s view, this case is attributable to a flaw with the Smart Mobile Client used to receive the information. During the course of the investigation, the Claimant affirmatively testified that because he had requested an additional Track Authority on the Smart Mobile Client, he could not go back and review the prior Track Authority which would have shown joint authority with Parson. Significantly, the Claimant remained alert and attentive the entire time, which allowed him to see Parson from a safe distance. Upon slowly approaching Parson, the Claimant easily stopped and followed the proper procedure of briefing. As the Organization sees it, at no point was there any danger to an employee. It

concludes that the discipline was excessive. The Organization further faults the Carrier for relying exclusively on second hand information; the Carrier officer who testified during investigation was not present while the alleged violation occurred.

### *Position of Carrier*

The Carrier notes that the Claimant was required to notify Parson of the joint authority, then brief with him to determine what portion of their authorities overlapped so working limits could be established and flags placed. Parson's track authority was issued prior to the Claimant's, so Parson would have been completely unaware that another authority had been issued.

According to the Carrier, the problem is that the Claimant did not fully review his track authority and failed to brief with Parson prior to entering his track limits. Consequently, the Claimant endangered himself and the other work group when he came around a curve on the overlapping portion of the track authority, and found men on the track.

The Carrier points out that the Claimant's prior Level S suspension was for occupying a main track without protection. In its view, the Claimant's 13 years of service is not properly considered as mitigating because of the danger inherent in the situation: Parson had no idea that anyone else might appear on the track. It is to the Claimant's credit that he was only going 5 mph when he rounded the curve and saw Mr. Parson. However, the Carrier insists it does not have to expose its employees to an unsafe situation or accident before it can enforce its rules regarding safety.

### *Analysis*

The Claimant knew or should have known that his authority was shared and that it was a critical safety obligation to have a briefing with the person or persons sharing his authority. He failed to satisfy this very reasonable and important obligation. It is telling that he was under a review period for the same type of offense. Many serious dangers are inherent in operation of a railroad. The Carrier is not only held responsible for safety generally, but is tasked with making sure its employees are working safely. The Carrier acted reasonably in considering the offense as serious. Because the Claimant was already under a Record Suspension, the Carrier was within its rights to elect dismissal as the proper disciplinary action.

**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 29<sup>th</sup> day of July 2021.**