

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44625
Docket No. MW-46103
22-3-NRAB-00003-200234**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

PARTIES TO DISPUTE: (

**(The Kansas City Southern Railway Company
(former MidSouthrail Corporation)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (suspension) imposed upon Mr. R. Colvin, by letter dated May 10, 2019, in connection with an incident that occurred on April 22, 2019 when he allegedly failed to properly perform his duties in a safe and proper manner while backing up Bridge Truck 301 (MW12001) and trailer resulting in damages and failed to report the accident immediately was excessive and without just and sufficient cause [System File 19 05 10 (009)/2019-0234 MSR].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Colvin’s record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”**

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.

After investigation held May 2, 2019 and by letter dated May 10, 2019, the Claimant – an employee in the Carrier’s service for 19 years – received a 60-day suspension (30 days actual) for failing to wear a seatbelt in a Carrier vehicle on April 22, 2019.

On April 22, 2019, the Claimant was a passenger in a Carrier vehicle driven by another employee. The evidence shows that at times the Claimant was in the vehicle while in motion, he did not always have his seatbelt fastened. The Claimant testified that he did not have his seatbelt fastened while reversing moves were being made. Tr. 30-32 (“... my seatbelt was off at that particular time ... I took my seatbelt off ... my seatbelt was off ... I just didn’t see no need to just to make that little short move and put it back on”).

Substantial evidence shows that when he did not have his seatbelt fastened while the vehicle in which he was riding was moving, the Claimant violated Rule GS-14 [emphasis added]:

GS-14 Vehicles and Equipment

* * *

- D. Subject to the following exceptions, all KCS employees and contractors are required to wear seat belts at all times while operating or riding in a Company vehicle or any other Company or contractor equipment that is equipped with a seat belt by the manufacturer. This includes Kubota UTVs, golf carts, Gators, forklifts, lawn mowing equipment, tractors, and all on-and-off track roadway maintenance machinery.**

“[A]t all times while ... riding ...” means just that. The exceptions listed in Rule GS-14 for a hi-rail vehicle on the rail or when lacing air hoses on a train consist were not applicable to the Claimant’s activities on the day of the incident.

The Claimant's prior discipline record before this incident shows a 30-day suspension (five days served) from July 2017. Carrier Exhibit K at 4. A 60-day suspension (30 days actual) was progressive and therefore not arbitrary.

The claim shall 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 15th day of December 2021.