

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44630
Docket No. MW-45709
22-3-NRAB-00003-200022**

The Third Division consisted of the regular members and in addition Referee Jeanne Charles when award was rendered.

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

PARTIES TO DISPUTE: (

(Huron and Eastern Railway Company, Inc.

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (letter of reprimand) imposed upon Mr. E. Martinez, by letter dated September 20, 2018, for alleged violation of General Code of Operating Rules 1.1.1 Maintaining a Safe Course and G&W Engineering Safety Rules and Procedures General Rule 1 in connection with allegations that Mr. Martinez failed to make any attempt to stop or prevent the driver of a Company vehicle, in which he was a passenger in, from driving in a very aggressive and unsafe manner and traveling at a speed well above the posted speed limit multiple times between 1230 and 1300 hours on July 20, 2018 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File H92408818 HES).**
- (2) As a consequence of the violation referred to in Part (1) above, all notations of Claimant E. Martinez’s discipline shall 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.

Claimant E. Martinez has established and holds seniority within the Carrier's Maintenance of Way Department. He was hired on October 1, 2007. The Claimant was assigned as a Track Laborer at the time of this dispute. On July 20, 2018, the Claimant was working with Welder, Jeffrey Schluckebier (Schluckebier) delivering rail in a company vehicle to Sebewaing, Michigan. Director of Compliance and Labor Relations, Randall Perry (Perry) and Assistant Vice President of Compliance and Operating Practices, Derick Mann (Mann) were also in the area conducting efficiency tests for Carrier. At approximately 12:30 p.m. to 1:00 p.m., Perry was driving with Mann towards Saginaw, MI and pulled over on the side of the road to determine where they would go next. At this time, they reported observing a Carrier maintenance of way vehicle passing by them at a high rate of speed. Mann retrieved his handheld radar gun, exited his vehicle and got a reading of 81 miles per hour. The posted speed limit at this location was 55 miles per hour. Mann entered his vehicle and he and Perry began to follow the Carrier vehicle. Perry and Mann reported observing the Carrier vehicle driving erratically, passing multiple cars on the two-lane road. Eventually, they caught up with the Carrier vehicle which had stopped in front of the Claimant's residence. Perry and Mann approached the Claimant and Mr. Schluckebier to discuss their observations. Schluckebier was the driver of the Carrier vehicle and stated that the vehicles he passed were not going with the flow of traffic. The Claimant admitted that Schluckebier was driving aggressively. As a result of this incident, the Claimant was served with a notice of formal investigation on August 1, 2018, setting forth the following:

This [f]ormal [i]nvestigation is being held to develop the facts and determine your responsibility, if any, in connection with the report that on Friday, July 20, 2018 between Vassar, MI & Saginaw, MI from

approximately 1230 to 1300 hours, you allegedly failed to take immediate action to prevent a possible loss or injury while in a

company vehicle as a passenger, and the driver was operating recklessly. In addition you displayed a willful disregard affecting the interest of the company.

The investigation was originally scheduled for August 9, 2018, and after a postponement, was conducted on August 23, 2018. Following the investigation, it was the determination of Vice President of Transportation, Derrick Wright that sufficient evidence had been adduced to sustain the charges against the Claimant. On September 20, 2018, the Claimant was issued a letter of reprimand requiring him to develop a corrective action plan and complete a remedial defensive driving training.

The General Code of Operating Rules (“GCOR”) and Genesee & Wyoming¹ Engineering Safety Rules and Procedures (“ESRP”) which the Claimant was found to have violated are as follows:

GCOR 1.1.1 – Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

GWI ESRP General Rule 1

If an employee notices any unsafe act or condition at any time while on GWI property and property served by GWI, while either on or off duty, it is the employee's responsibility to take whatever immediate action necessary to prevent loss or injury resulting from such condition, and then to immediately report the unsafe act or condition to a company supervisor. Warn all other persons in the immediate area of the condition to avoid their contact with the unsafe condition.

In response, the Organization submitted a claim by letter dated October 26, 2018. The claim was properly handled by the parties at all stages of the appeal up to and including the Carrier’s highest appellate officer. The matter was not resolved and is now before this Board for resolution.

¹ Genesee & Wyoming Inc. (“GWI”) is the Carrier’s parent company.

In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that, under the specific circumstances presented in this case, the Carrier has met its burden of proof that the letter of reprimand was for just cause.

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.