

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44665
Docket No. MW-46392
22-3-NRAB-00003-200604**

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

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

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) day record suspension and a three (3) year review period] imposed upon Mr. J. Lane, by letter dated January 16, 2019, for violation of MWOR 6.3.1 Track Authorization was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File T-D-5842-M/11-19-0302 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Lane shall have his record cleared of the charges leveled against him and be compensated for all wage loss suffered and any and all benefits.”**

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, Track Inspector Jacob Lane, has been employed by the Carrier since May 2, 2011. He was assessed a Level S - thirty-day record suspension with a three-year review period on January 16, 2019, for violating the Maintenance of Way Operating Rule ("MWOR") 6.3.1, Track Authorization, on December 12, 2018, following an Investigation held on January 2, 2019. The Carrier argues that the Claimant's admission of guilt provides substantial evince that he exceeded the required track limits. Moreover, the Carrier claims the Organization violated Rule 42, Time Limit on Claims, paragraph (A), when it failed to provide an appeal of the discipline assessed within 60 days.

Before reaching the merits of the dispute, the Board addresses the Organization's procedural objection alleging that the hearing officer failed to ensure the Claimant was afforded a fair and impartial hearing. A review of the record does not support the Organization's allegations.

A review of the Carrier's procedural objection that the Organization's claim was untimely is sustained. Rule 42A, in pertinent part reads as follows:

All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based.

The record confirms that the Organization's claim was not presented in writing to the Carrier until March 20, 2019, which is 3 days beyond the 60-day period from the notice of discipline dated January 16, 2019. The Board finds that failing to file a claim appealing a disciplinary action within the proscribed time limits constitutes procedural error. Legions of awards from arbitral tribunals have found that submitting a claim beyond the applicable filing period constitutes a fatal procedural flaw.

As such, the Board does not decide the matter on the merits of the dispute, but notes that the Claimant's admission in the record would be sufficient to

establish the Carrier's burden of proof. The penalty imposed was not an abuse of discretion.

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 28th day of January 2022.