

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44675
Docket No. MW-46440
22-3-NRAB-00003-210159**

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. C. Arp, by letter dated August 5, 2019, for violation of EI 14.3.3. Maintaining Roadway Equipment was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-19-D040-24/10-20-0003 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Arp’s personal record shall be cleared of the charge leveled against him.”**

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, Sectionman Christopher Arp, has been employed by the Carrier since March 4, 2019. He was assessed a Level S 30-day record suspension with a three-year review period on August 5, 2019, for violating Engineering Instructions 14.3.3, Maintaining Roadway Equipment, on June 24, 2019, and following an Investigation held on July 8, 2019. The Carrier argues that the Claimant's admission of guilt provides substantial evidence that he failed to operate his spiking equipment properly when he did not "lock up/pin up" the work heads when traversing over fixed objects which resulted in the equipment striking a switch stand and causing damage.

Before reaching the merits of the dispute, the Board addresses the Organization's procedural objections alleging that the hearing officer failed to ensure the Claimant was afforded a fair and impartial hearing. It maintains that Rule 40C was violated when five days advance written notice of the investigation was not provided and that the Carrier committed a fatal flaw when it did not enter the correct section of Engineering Instructions 14.3.3 as evidence during the Investigation. A review of the record does not support the Organization's allegations. The written notice of June 24, 2019, scheduling the investigation initially for July 3, 2019, was received by the Claimant and Organization on June 28, 2019. Whether using the mailed or received date for determining proper notice, we find that the Carrier did not violate Rule 40.

We also find that the record does not contain an objection by the Organization to Engineering Instructions 14.3.3 not being properly entered into evidence. As such, the objection raised before the Board is barred from review.

In discipline cases, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. Our review of the merits finds that Roadmaster Justin Cowper's testimony and the Claimant's admission sufficiently establishes the Carrier's burden of proof. The Claimant acknowledged that he did not "lock up/pin up" the work heads and that he was looking behind him instead of looking down. His testimony indicates he did not ensure the safe operation of his equipment and did not follow the applicable rule.

Given the seriousness of the infraction and the Claimant's short period of service, we find the penalty imposed is not an abuse of discretion. The Carrier, where not limited by the Agreement, has the discretion to implement measures it finds necessary to ensure the safety of its employees and property. The Board finds no grounds to disturb the Carrier's decision.

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.