

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44679  
Docket No. MW-46117  
22-3-NRAB-00003-200337**

**The Third Division consisted of the regular members and in addition Referee Brian Clauss when award was rendered.**

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

**PARTIES TO DISPUTE: (  
(Iowa Interstate Rail**

**STATEMENT OF CLAIM:**

- “1. The discipline (dismissal) imposed upon Mr. M. Scheiner, by letter dated April 8, 2019, for violation of multiple Carrier rules in connection with his alleged failure on March 25, 2019, to conduct a job briefing prior to operating the boom truck on a public street and leaving the boom extended on the boom truck resulting in the boom truck coming into contact with overhead wires causing severe damage thereto was arbitrary, capricious, and excessive.**
- 2. As a consequence of the violation referred to in Part 1 above, Claimant Mr. Schreiner shall be reinstated to service with seniority unimpaired, paid all lost wages (including but not limited to straight time house, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health and welfare and dental insurance and any and all other benefits to which entitled), with his record expunged the same as if he was never affected by this discipline.”**

**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 Carrier maintains that there is substantial evidence that the Claimant failed to conduct a job briefing and then operated the boom truck with the boom extended. The boom struck overhead lines and caused significant damage and risk of serious injury or death.

The Carrier continues that the Claimant was afforded a full and fair hearing in accordance with the Agreement. There was substantial evidence of the violation. Based upon the Claimant's disciplinary history, the termination was appropriate.

The Organization argues that there is no substantial evidence in the record to support the discipline. The facts shows that the Claimant and his partner were rushing to complete the delivery of the rail. They entered the cab of the truck and inadvertently left the boom raised as they endeavored to continue their work assignment in a timely manner. This was not negligence, but rather employees trying to meet the needs and expectations of the Carrier.

The Organization continues that although there may have been a need to discipline the Claimant, the discipline of discharge was excessive. Further, charging the Claimant with nine Rule violations was excessive. The Claimant was honest about what occurred.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

This Division has reviewed the record and submissions in the instant matter. The evidence shows that Grievant and his partner were operating a grapple truck. Upon completion of their assignment, they entered the truck in order to proceed to another location. There is substantial evidence in the record that a job briefing was

not conducted. There is also substantial evidence in the record that the grapple truck was not checked prior to departure. The truck departed with the boom still extended from the work that was completed shortly before departure.

The evidence also shows that upon entering a thoroughfare, the grapple truck tore through overhead lines because the boom had not been lowered and secured. Substantial property damage was caused by the boom striking the wires.

This Division finds that there is substantial evidence in the record to support the violation of the cited rules. The charged conduct has been proven and the inquiry turns to the discipline imposed of removal from service. A review of the incident and the Claimant's disciplinary history shows that the Carrier did not abuse its discretion when it removed the Claimant from service.

**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 28<sup>th</sup> day of January 2022.