

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44836
Docket No. MW-46356
23-3-NRAB-00003-200348**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

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

PARTIES TO DISPUTE: (
(BNSF Railway 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 one (1) year review period] imposed upon Mr. B. Luchsinger, by letter dated November 29, 2018, for violation of MWOR 1.1.2 Alert and Attentive was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File T-D-5725-S/11-19-0126 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant B. Luchsinger shall have his record cleared of the charges leveled against him and 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.

Factual Background:

At the time this case arose, the Claimant had accumulated over 40 years of service with BNSF. On the dates here involved, he was working as a machine operator.

There is no dispute that the Claimant's machine swiped the side of a signal bungalow. The Claimant says he followed proper protocol and followed all necessary safety precautions prior to the signal bungalow incident, just as he had done for decades.

Position of Organization:

In the Organization's view, this was an unfortunate incident caused in part by unavoidable blind spots which exist when operating such a large piece of equipment. In the Organization's assessment, the Claimant's 40 years of machine operation without incident should have constituted a mitigating circumstance. It maintains the Carrier's failure to take this mitigating circumstance into consideration defeats any conclusion that the disciplinary measure of a 30-day record suspension was remotely fair.

Position of Carrier:

According to Signal Manager L. Huizenga, the side of the bungalow that the Claimant struck is where the crossing boxes are located (the brains of the crossing), and they were damaged and had to be replaced, in addition to batteries that were knocked over and leaked battery acid. Huizenga further advised that the crossing was actually taken out of service, and trains had to stop short of the crossing and protect their movement through the crossing. It concludes that the incident was quite serious and the discipline was more than justified.

Analysis:

At hearing it became evident that that this case is no longer contested between the parties. It is therefore deemed to be moot.

AWARD

Claim dismissed.

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 10th day of March 2023.