

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44904  
Docket No. MW-46151  
23-3-NRAB-00003-230322**

**The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(The Belt Railway Company of Chicago**

**STATEMENT OF CLAIM:**

**“It is the claim of the Brotherhood that the discipline assessed The Claimant was excessive, unsupported and must not stand. As a remedy for the violation, the Claimant shall be reinstated to service with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The Claimant shall be made whole for all financial losses as a result of the violation ....”**

**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.**

**By notice dated January 24, 2019, the Claimant was informed that he had been discharged from his employment on charges that he had violated Carrier General Code of Operating Rules relating to conduct, negligence, dishonesty, and reporting and**

complying with instructions during his tour of duty on January 13, 2019. At Claimant's request dated January 24, 2019, a hearing on these charges was conducted on February 6, 2019. By letter dated February 13, 2019, the Claimant was notified that his dismissal had been upheld. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because the Claimant received a fair and impartial investigation, because the Claimant properly was found to be at fault based on overwhelming evidence that he was not performing service as required by his supervisor, because there is no merit to the Organization's claims, and because the discipline imposed was warranted and was not harsh, arbitrary, or an abuse of discretion. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to timely conduct the requested hearing, because the Claimant failed to afford the Claimant a fair and impartial investigation, because the Carrier violated the Claimant's due process right to discovery and withheld pertinent information, because the Carrier failed to meet its burden of proof, and because the discipline imposed was excessive, unsupported, and must not stand.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The record reveals that the Claimant was guaranteed all of his due process rights throughout the proceeding.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to perform the work as assigned on the date in question. The Claimant was merely sitting around and failed to remove the snow and take action as he was assigned to do that day.

This Board finds that, given the unique circumstances of the situation in this case, the Claimant should receive five months of back pay, but he shall not receive his job back with the Carrier. The Claimant subsequently was permanently disabled and, therefore, the five months award of pay is the sole remedy in this case. The Claimant

shall not be returned to work.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

Dated at Chicago, Illinois, this 21<sup>st</sup> day of April 2023.