

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45026  
Docket No. MW-46606  
23-3-NRAB-00003-210602**

**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: (**  
**(Consolidated Rail Corporation**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

**(1) The discipline [five (5) day suspension] imposed upon Mr. R. Perez, by letter dated June 29, 2020, for allegedly being absent without permission was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File Perez 368284 G-32 ND/CRMW-01427-20D CRC).**

**(2) As a consequence of the violation referred to in Part (1) above, Claimant R. Perez’s personal record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered including benefits and credits”**

**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 June 9, 2020, the Claimant was directed to attend a formal hearing on charges that he allegedly had abandoned his assignment without authorization when he absented himself from duty without permission on June 8, 2020. The hearing was conducted, after a postponement, on June 24, 2020. By notice dated February 16, 2021, the Claimant was informed that he was being assessed a five-day disciplinary suspension, which was deemed served during the nine-day period that he was withheld from service. 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 Board has no jurisdiction in that the Claimant and the Organization failed to timely appeal this claim under Rule 26, because the Claimant received a fair and impartial investigation in accordance with his due process rights, because substantial evidence established that the Claimant was guilty as charged, because there is no merit to the Organization's claims, and because the discipline imposed was fully warranted in light of the Claimant's work record and proven guilt. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to afford the Claimant a fair and impartial investigation in accordance with his due process rights, because the Carrier failed to allow the Claimant the necessary time to appeal the discipline under Rule 27, because the Carrier failed to meet its burden of proof, and because the discipline imposed was unwarranted and excessive.

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

This Board has reviewed the procedural arguments raised by both parties in this case, and we find that they do not have any merit.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier failed to meet the burden of proof that was required in this case and, therefore, this claim must be sustained. It is fundamental that the Carrier bears the burden of proof in all discipline cases. In this case, the record is clear that the employees understood that they could leave the property and return home in order to limit their unnecessary exposure to COVID-19. They also would remain available on call and accept a call back during their shift. The Claimant merely abided by that policy on the date in question.

**Since the Carrier failed to meet its burden of proof that the Claimant had violated any Carrier rule in this case, this Board has no choice other than to sustain the claim.**

**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 7<sup>th</sup> day of September 2023.**