

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45027  
Docket No. MW-47476  
23-3-NRAB-00003-220668**

**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 [nine (9) day actual suspension] imposed upon Mr. I. Golden, on the basis of his alleged conduct unbecoming an employee when he failed to immediately notify supervision that he tested positive for COVID-19 on January 10, 2021, until he was contacted by Employee Generalist M. Unterbrink on January 13, 2021, was in violation of the Agreement, “deprived Mr. I. Golden of his rights of due process, was imposed even as the Carrier failed to meet its burden of proof and was excessive and harsh (Carrier’s File CRMW-1432-21D CRC).**

**(2) As a consequence of the violation referred to in Part (1) above, Mr. I. Golden shall have his discipline rescinded and he shall be made whole for all lost wages, with the Carrier actually training its employees on all policies in regards to COVID-19.”**

**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 February 2, 2021, the Claimant was notified that he was being withheld from service and was directed to attend a formal hearing on charges that he had engaged in conduct unbecoming an employee when he allegedly failed to immediately notify supervision that he had tested positive for COVID-19 on January 10, 2021, until he was contacted by Employee Generalist M. Unterbrink on January 13, 2021. The hearing was conducted, as scheduled, on February 10, 2021. By notice dated February 16, 2021, the Claimant was informed that he was being assessed a nine-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 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 the seriousness of the proven charges. 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, because the Carrier improperly pre-judged the Claimant when it held him out of service pending the investigation, because the Carrier failed to enter a witness' notes into the record, 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 the Organization, and we find them to be without merit.

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 did not follow the Carrier's COVID-19 procedures in that he knew that he had received a positive COVID test on January 10, 2021, and he did not report that test result until January 13, 2021. The record reveals that the Claimant was fully aware of the Carrier's policies and failed to abide by those policies. The Claimant's failures put in him line for disciplinary action.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant in this case was issued a nine-day suspension for his wrongdoing. Given the seriousness of that wrongdoing, this Board cannot find that the nine-day suspension was unreasonable, arbitrary, or capricious. Therefore, this claim must be denied.

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