

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45154
Docket No. MW-47486
24-3-NRAB-00003-220533**

The Third Division consisted of the regular members and in addition Referee Jeanne M. Vonhof when award was rendered.

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

PARTIES TO DISPUTE:

(BNSF Railway Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (standard formal reprimand) imposed upon Mr. M. Miller, by letter dated December 22, 2020, for violation of MWOR 1.6 was on the basis of unproven charges, “arbitrary, excessive and in violation of the Agreement” (System File C-21-D040-8/10-21-0095 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant M. Miller shall have his record cleared of the charges leveled against him and he shall be compensated in accordance with Rule 40G of the Agreement”**

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.

Claimant M. Miller, at the time of the hearing, had approximately 14 years of seniority with this Carrier and was assigned as the Surfacing Gang Foreman. The Claimant has been charged with violating Maintenance of Way Operating Rule 1.06 which prohibits, among other conduct, insubordination and discourteousness.

On the day in question, September 23, 2020, the Claimant's surfacing gang had waited from about 11:30 AM until 7:00 PM to start their surfacing work. This was due to other work that had to be completed before surfacing could begin. Supervisor Nichols was also at the site for much of the day.

It is undisputed that once surfacing work began, Nichols approached the Claimant, discussing the painting of covers to ensure they were visible. Nichols reported that the Claimant was brusque in his reply, stating that they did not need to paint the covers. The Claimant testified that Nichols made derogatory comments about one of his gang members in this discussion and he walked away.

Nichols reported that he then asked the Claimant for his Position of Switch form, as an operations test. He asked that the Claimant step off the track to speak with him and show him the form. In the hearing, the Claimant reported that he told Nichols he would talk to him and show him the form when his work was done. Nevertheless, the Claimant admits that he refused to step down from the track to talk to Nichols, and then he refused two more times when Nichols continued to request to speak to him about the form. The Claimant admitted that he told Nichols to just "write him up for an Ops failure" when he refused to talk to the Supervisor.

It was clear from the Claimant's testimony that he was annoyed with Supervisor Nichols because, in his view, Nichols should have asked him for the form earlier in the day, and had criticized his gang member. However, this Board finds that there is substantial evidence, including the Claimant's admission, that the Claimant was discourteous and insubordinate with Nichols. Even if the Claimant believed he was "in the right," there is no justification for him failing to follow a direct request to step off the track and speak with a supervisor. After 14 years on the job, the Claimant knew that he had an obligation to comply with repeated requests to speak to a supervisor.

The Board takes note of the Organization's procedural argument that the Carrier has split the incident on September 23, 2020 into two separate charges. However, there is no requirement that the Carrier combine multiple separate violations in a single investigation. The Board finds that the allegations of procedural errors raised

by the Organization did not impair nor prejudice the Organization in the presentation of its case, or violate the due process rights of the Claimant.

The Board finds that the Carrier had substantial evidence to support the Claimant's violation of Rule 1.6. He was both discourteous and insubordinate. The discipline imposed by the Carrier is not unreasonable or excessive, but rather is in line with progressive discipline under the Carrier's disciplinary policy.

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 22nd day of February 2024.