

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45155  
Docket No. MW-47487  
24-3-NRAB-00003-220534**

**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 [thirty (30) day record suspension with a one (1) year review period] imposed upon Mr. M. Miller, by letter dated December 15, 2020, for violation of MWOR 8.2 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-21-D040-9/10-20-0096 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 the Carrier and was assigned as a Surfacing Gang Foreman. The Claimant has been charged with violating MWOR 8.2, which states in relevant part,

**“Except in CTC territory or within a manual interlocking, the employee in charge must complete the form entitled Position of Switches/Derails when any of the following are hand operated:**

- Main Track switch
- Main Track switch point lock
- Derail protecting access to a Main Track.

When required, record the following information on the form:

- Name and location of the switch, switch point lock or derail operated
- Time the switch, switch point lock or derail is in initially operated
- Time the switch, switch point lock or derail is finally restored to the correct position.

**This record must be retained for 2 days after the tour of duty.”**

On the day in question, September 23, 2020, the Claimant’s surfacing gang and their heavy equipment had waited from about 11:30 in the morning until 7:00 in the evening 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 the Claimant, discussing painting the covers to ensure that they were visible. Nichols reported that the Claimant was brusque in his reply, stating that the covers did not need to be painted. The Claimant alleges that Nichols made derogatory comments about one of his gang members and he objected to it and walked away.

Nichols reported that he then asked the Claimant for his Position of Switch form, asking that the Claimant step off the track to speak with Nichols 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 about the Position of Switch form, three times. The Claimant admits that he told Nichols to just “write him up for an Ops failure” for his failure to provide him with the Position of Switch form. In the hearing the Claimant stated that he had some of the information in his truck written on a piece of paper, but did not wish to walk to his truck to obtain it. He said that he was annoyed that Nichols was conducting this operations test while the Claimant was trying to complete a project.

The Organization contends that this discipline arose out of the same incident as the incident in Claim 220533, and the two alleged violations should have been heard together in one investigation. The Organization argues that the failure to provide the Position of Switch form was part and parcel of the Claimant’s alleged discourteous behavior which forms the basis of the MWOR Rule 1.6 violation addressed in Claim 220533. The Organization contends that the Carrier purposefully separated the two issues in order to “pile on” discipline.

The Claimant’s conduct with regard to the Operations Test went beyond simple discourteous behavior. The Claimant had a separate obligation to fill out the information on the Position of Switch form and failed to establish that he had done so, when asked to show the form. With multiple crews working on tracks, it is important to record when switches are changed and then placed back in their original position. The Claimant as EIC had an obligation to record the information correctly, which helps prevents errors and provides documentation in the case of a fouling of the track. This is a critical safety rule violation, which constitutes a basis for discipline standing alone.

Moreover, the Carrier could have imposed the same level of discipline even if the claims were heard together. According to the Carrier’s Corporate Policy of Employee Performance Accountability, the first serious safety violation can draw a 30-day suspension and a 36-month review period. The Carrier credited the Claimant with his long seniority and no previous record of discipline by giving him only a 12-month review period rather than a 36-month review period.

The Organization also argues that the Hearing Officer was biased, and therefore, the hearing was not fair. This Board does not conclude that the Hearing Officer’s questions indicate bias. Rather, the questions were aimed at sorting out the contradictions in Claimant’s evidence, especially with regard to his testimony concerning writing down certain information on a piece of paper but not putting the information on the proper form.

According to his testimony, the Claimant understood the rules and his obligation under them. He refused a direct request from a supervisor to provide the proper documentation. The Claimant did not offer to go to his truck to get the piece of paper on which he said he had documented the required information, in order to establish that he had documented it, even if not on the correct form. It is clear from the Claimant's actions and testimony that he did not treat the documentation of the position of switches seriously. He preferred to be assessed with a violation of the rule. Under these circumstances, the Board finds that the level of discipline imposed was in accordance with the Carrier's Policy of Employee Performance Accountability and was not arbitrary or excessive.

**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 22<sup>nd</sup> day of February 2024.