

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45253
Docket No. MW-47702
24-3-NRAB-00003-221127**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

PARTIES TO DISPUTE: (

(Dakota, Minnesota & Eastern Railroad Corporation

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [twenty (20) day suspension served without pay] imposed on Mr. J. Achenbach, by letter dated July 27, 2021, for alleged violation of Engineering Safety Rule Book: E-0 Job Safety Briefings, Engineering Safety Rule Book : E2 Vehicles used for Company Business, Engineering Safety Rule Book: E16 Hazardous Energy Control Lockout, US Rulebook for Engineering Employees 1.13 Reporting and Complying with Instructions, US Rulebook for Engineering Employees: 1.15 Duty – Reporting or Absence, US Rulebook for Engineering Employees 21.2.2 Equipment Located Within Non-Controlled Track Area and US Rulebook for Engineering Employees 29.6 Responsibilities of Lone Worker was imposed without according Claimant his contractual rights, due process rights and with no burden of proof being fulfilled by the Carrier before it assessed what can only be deemed as excessive and unduly harsh discipline that constitutes an abuse of discretion (System File B-2134D-205/USA-DME-BMWE-2021-00024156 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Achenbach shall ‘ . . . now be made whole by compensating for all wage and benefit loss suffered, any and all expenses incurred or lost as a result of Round Trip Travel not paid for the scheduled Hearing on July 7, 2021, and the alleged charge(s) be expunged from Claimant’s personal employment record.**

Claimant must also be made whole for any and all other loss incurred and compounding from this event until this event is expunged from the Charged employees employment record.”

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 John Joseph Achenbach began service with the Carrier on April 2, 2012. Claimant established and holds seniority within Carrier’s Track Sub-group and Work Equipment Repair group. At the time of the incident, Claimant held the position of On Track Equipment Technician and had accumulated approximately 9.2 years of service.

As noted in paragraph (1) above of the Statement of Claim, Claimant was charged with having committed multiple rules violations all emanating from his having reported early to his work location the morning of June 24, 2021 before his start time and commencing work without participating in a job safety briefing with his supervisor, Work Equipment Supervisor Aaron Lowrey. In addition, after beginning performing his job duties, Claimant was observed by Supervisor Lowrey engaging in unsafe work practices such as, for example, failing to have sufficient measures in place to provide proper track protection, and moving a company vehicle with outrigger deployed.

According to Supervisor Lowrey, he telephoned Claimant at his hotel located at Decorra, Illinois in the afternoon of June 23, 2021, and instructed Claimant to begin his work day at 5:00 AM on June 24, 2021, at which time he was to leave his hotel location and drive approximately four (4) hours to the work site that day located at Byron, Illinois, where he would meet Claimant in and around 9:00 AM to hold a job safety briefing. Lowrey related he arrived in Byron at 8:10 AM and upon his arrival he

witnessed Claimant actively working alone repairing a piece of equipment known as the 1004 Jordan Spreader. Lowrey asserted that Claimant informed him that he had started his work day at 1:00 AM instead of 5:00 AM as he had been instructed, thus providing the explanation as to how he had arrived at the work site at either 5:00 AM or 5:30 AM well in advance of the time of his arrival at 8:10 AM. Lowrey asserted that aside from Claimant not complying with his instruction to begin his work day at 5:00 AM, and not having contacted him upon his arrival at the work site, Claimant commenced performing the repair work by himself in disregard of his having also informed Claimant that the two of them would perform the repair work together. Lowrey noted that beginning to perform the repair work in question by himself without first engaging in an on-track safety (OTS) job briefing was in violation of Rule 29.6 Responsibilities of Lone Worker, US Rulebook for Engineering Employees which requires establishing a planned itinerary of the work to be performed and, an OTS procedure to be used. Lowrey noted that when he arrived at the work site, Claimant approached him and it was then that he and Claimant, deemed to be the employee in charge, held an OTS that corrected other safety issues that Claimant was found, up to that point in time, not to be in compliance with. Lowrey related that when Claimant went to move his Company work truck very shortly after completing the OTS, he noticed the outrigger on Claimant's truck was still in the down position but that Claimant nevertheless, started moving the truck. According to Lowrey, it was only when Claimant noticed he was watching him move the truck with the outriggers in the down position, that Claimant stopped the truck, got out and raised up the outriggers. Lowrey explained it was at this point in time that he contacted his superior in the chain of command, William Washburn, Manager Work Equipment to inform him of what he had observed Claimant doing at the work site and the various violations Claimant had committed. According to Washburn, he and Lowry made a joint decision to take Claimant out-of-service out of fear Claimant, if continuing to perform his duties not in compliance with safety rules would either significantly hurt himself or someone else. Lowrey surmised it was probably around 9:15 AM that he took Claimant out of service. He then drove Claimant to his headquarter point located at Austin, Minnesota, a trip of five and a half (5 ½) hours, whereat Lowrey observed Claimant enter his personal vehicle to drive home.

According to Claimant, he started his work day on June 24, 2021 at 1:00 AM by performing his job briefing and his walk around his Company vehicle and then left his hotel at Decorra at 2:00 AM, arriving at the Byron work site at about 6:45 AM. Claimant related that Lowrey was not at the work site when he arrived and concurred that he did not notify Lowrey he had arrived at the work site so early. According to Claimant, he was aware that Lowrey had told him that he would meet him at the work

site and that they would perform the repair work together so he figured that when he arrived at 6:45 AM, Lowrey was on his way to meet him. Upon arrival, Claimant related he began work by tagging and locking out the switches at both the east and west end points of the track the Jordan Spreader was situated on. Claimant also related he followed the procedure that has been in effect for at least the last twenty (20) years to lock out the Jordan Spreader. He also tagged and locked out one door of the locomotive on the track. After he set up track protection, Claimant related he completed the job briefing with himself and then waited for Lowrey to arrive. With regard to not raising the outriggers before entering his truck, Claimant related he had forgotten to raise the outriggers but before putting the truck in gear but after releasing the brake, he remembered the outriggers were still down so he put the brake back on, exited the truck and raised the outriggers.

Upon thorough review of all record evidence and the applicable rules cited by Carrier that Claimant was charged with violating, the Board finds that, contrary to the Organization's defense of Claimant, Carrier has provided substantial evidence, to support its position that Claimant's actions beginning the early morning of June 24, 2021, in fact, were in contradiction with instructions he was given by his Supervisor Aaron Lowery the prior afternoon of June 23, 2021. Clearly, Claimant did not participate in a job briefing that required inclusion of Lowery at the work site before he commenced performing job duties at the site. Having been apprised by Lowery that after they met each other at the work site, they both would be performing the required repair to the Jordan Spreader, Claimant nevertheless totally disregarded this information and proceeded on his own to commence work without having met with Lowery. Not only did he disregard this directive by Lowery Claimant also countermanded Lowery's instruction to begin his tour of duty at 5:00 AM electing instead to start his tour of duty at 1:00 AM thus insuring he would arrive at the work site much earlier than 9:00 AM, the time Lowery indicated he would be meeting with Claimant. The Board finds no evidence to dispute Lowery's first-hand observations that Claimant's performance of job duties while working alone at the work site violated the various safety rules he was charged with having committed. Accordingly, the Board rules to deny the claim in its entirety.

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 28th day of March 2024.