

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45313
Docket No. MW-47903
24-3-NRAB-00003-230348**

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

**(Brotherhood of Maintenance of Way Employees 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 (dismissal from CP effective immediately) imposed on Mr.T. Fortmann, by letter dated June 7, 2022, for alleged violation of US Rulebook for Engineering Employees: 1.1.2 Alert and Attentive, US Rulebook for Engineering Employees: 1.6 Conduct and US Rulebook for Engineering Employees: 1.11 Sleeping was in violation of his express due process rights, not pursuant to a fair and impartial hearing and imposed even as the Carrier failed to provide adequate evidence to apply such harsh discipline (System File B-2234D- 205/2022-00029264 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant T. Fortmann 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 May 18, 2022, and the alleged charge(s) be expunged from Claimant’s personal employment record and returned to active service. 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.

Our review of the record does not reveal any procedural shortcomings of significance.

Claimant was dismissed for violating Carrier rules governing conduct and alertness and attentiveness while on duty on May 12, 2022. At the time of the incident, Claimant had approximately two years of service as a welder for the Carrier.

Our review of the on-property records shows it to contain substantial evidence in support of the Carrier's determination that Claimant was found asleep in his truck. Thereafter he did not respond appropriately when directed to report to the truck of the Carrier official who found him asleep. Accordingly, there is no proper basis for disturbing the Carrier's action.

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 29th day of August 2024.