

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45315
Docket No. MW-47991
24-3-NRAB-00003-230482**

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 [twenty (20) day suspension served without pay imposed on Mr. D. Portner, by letter dated May 2, 2022, for alleged violation of Engineering Safety Rule Book E25 Protection When Working at Heights, Procedure H&S 5421: Fall Protection Systems Procedure – United States (Effective January 8, 2021), US Rulebook for Engineering Employees: 1.1 Safety, US Rulebook for Engineering Employees: 1.1.1 Maintaining a Safe Course and US Rulebook for Engineering Employees: 1.1.2 Alert and Attentive 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-2234D-204/2022-00028728 DME).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Portner 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 April 7, 2022, 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 (sic) 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.

The Claimant was assessed a twenty (20) day disciplinary for his actions, or inactions, on March 8, 2022. Our review of the on-property record does not reveal any procedural irregularities of significance.

Substantial evidence in the record supports the Carrier's determination that the Claimant violated several safety rules when he failed to use fall protection while working on the bridge at Milepost 82.96. He was observed working on the field side of the bridge while connecting a track panel at the site. Work activity caused parts of his body to break the plane of the outside rail of the panel, which was prohibited by the applicable rules.

We do not find any proper basis for disturbing the Carrier's disciplinary action. Accordingly, the 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 29th day of August 2024.