

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45317
Docket No. MW-48016
24-3-NRAB-00003-230516**

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 imposed by the Carrier on Mr. D. LeGare, on June 17, 2022, without according him his contractual due process rights and without meeting any burden of proof on known charges, was a violation of the Agreement, biased/predetermined and an unduly harsh and excessive abuse of discretion (System File B-2234D-206/2022-00029238 DME).**
- 2) As a consequence of the violation referred to in Part (1) above, Claimant**
 - A. LeGare 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 19, 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.

Claimant was assessed 15 demerits in accordance with Carrier's discipline policy for Non-major offenses and attendance issues. At the time, he had approximately 21 years of service with the Carrier.

According to the record, the Claimant was involved with the installation of a short span of plug rail in November of 2020. Approximately 17 months later, an FRA inspector noted that twelve rail anchors were missing. The rail also had lettering which indicated it had been written by the Claimant, or on his behalf, at the time of installation.

The rule involved, the Red Book 7.6.3., does require that anchors be installed, and or replaced, for continuous welded rail. But it does not establish who is responsible for doing so or seeing that it is done.

We do not find the testimony in the record to satisfy the substantial evidence test to establish the line of responsibility running back to the Claimant. Therefore, we must sustain the Claim.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 29th day of August 2024.