

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45387
Docket No. MW-48143
25-3-NRAB-00003-230470**

The Third Division consisted of the regular members and in addition Referee Barbara C. Deinhardt when award was rendered.

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

PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (final disciplinary action) imposed upon Mr. N. Van Wieren, by letter dated May 19, 2022, in connection with his alleged violation of the Carrier’s Code of Ethics and Standards of Behavior, Section V.B Attending to Duties, was in violation of the Agreement (Carrier’s File 162517 NRP).**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall now rescind the decision to discipline Claimant N. Van Wieren and shall make him whole in every way.”**

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.

According to the Carrier, the Claimant was assessed a Final Disciplinary Action after he was found, on March 23, 2022, to be sleeping in the driver's seat of his Amtrak vehicle, which was parked along the railroad right of way. When he awoke, he told the supervisor, "I must have been sleeping. Do what you have to do." This constitutes an admission of guilt. This is a serious offense.

The Organization argues that (1) the Carrier failed to afford the Claimant a fair and impartial investigation; (2) the Carrier failed to meet its required burden of proof; and (3) the discipline imposed upon the Claimant was arbitrary and excessive. According to the Organization, the lack of specificity in the Notice of Investigation about the nature of charges constitutes a clear violation of the Claimant's due process rights as outlined in the Agreement. Moreover, the Carrier failed to establish any proof that the Claimant was sleeping rather than unconscious due to a medical emergency. The undisputed evidence of record showed that the Claimant suffered a glucose spike at the time in question, leading to the conclusion that he suffered a blackout from this diabetic episode, until his insulin caught up moments later. The Carrier has no evidence to counter this medical and detailed, date-and-time-specific evidence. Finally, the Carrier's decision to assess a Final Disciplinary Action was excessive and unwarranted.

Upon a review of the record as a whole, the Board finds that the Carrier has not met its burden of proof. It appears from the record that Carrier management and the Claimant's co-workers were aware prior to this incident that the Claimant suffered from Type 1 diabetes. According to the Claimant, one possible side effect of uncontrolled sugar is a loss of consciousness. In his statement, the Claimant's supervisor Simmons wrote that after the Claimant woke up, "He appeared agitated and walked over to my truck. I asked him if he was feeling all right, and told him he was out cold. He said 'Oh, was I sleeping? I didn't realize.' I said 'Yeah, it's not acceptable.' He proceeded to tell me that he had walked track, eaten lunch, and come up to his current location to wait on a train. He then said, 'Do what you have to do,' got in his truck and drove off. He called me a few minutes later and said that he handled the situation poorly with me. He had looked at his blood sugar, which was over 400, and he said 'That was likely the cause of his conduct.' He said he didn't fall asleep, he passed out! He then said he would get some fresh air and stay parked until his level went down. He called me 17 minutes later and said his blood sugar level was down to 300, and he was heading back, he didn't want me to worry." The Organization submitted evidence from the Claimant's

glucose monitor that clearly shows a spike in blood sugar on the date and at the time in question.

After a review of the record in its entirety, we find that Carrier has not met its burden of proof. While the Carrier asserts that someone who was unconscious would not be able to immediately pop up and be alert after coming to, there was no evidence about how a diabetic would be affected once his insulin level corrected itself. When the Claimant went to talk to the supervisor, he was agitated and said he was not aware that he had been “out cold.” A few minutes after he spoke with the supervisor, he called him back and told him about his glucose reading. Under all the circumstances, we find that the Carrier has not proven by substantial evidence that the Claimant was sleeping rather than suffering a medical emergency. The discipline should be removed from his record.

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 19th day of December 2024.