

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45388
Docket No. MW-48144
25-3-NRAB-00003-230471**

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 (termination of employment) imposed upon Mr. N. VanWieren, by letter dated August 15, 2022, in connection with his alleged violation of the Carrier’s Code of Ethics and Standards of Behavior (V.D – Follow the Rules) and Procedure for the Installation, Adjustment, Maintenance and Inspection of CWR (9.1 – Report A – Record of Track Disturbance) was in violation of the Agreement (Carrier’s File 163233 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. ‘*** including by not limited to all lost straight time, overtime, vacation and retirement credits, and seniority rights unimpaired.’”**

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 terminated for the willful disregard of Amtrak CWR procedures and failing to perform safety sensitive demarcation notes on the rail as required by CWR procedures. On May 25, 2022, the Claimant was acting in the capacity of Foreman and the Employee in Charge (EIC) while completing the task of changing a Sperry Rail defect. The task included locating the defective rail, cutting the old section of rail out, replacing the rail and replacing the spike before placing the track back to service. The Claimant was provided with a copy of the new Continuous Welded Rail (CWR) packet and instructed by his supervisor on how to mark out the rail and fill out the Record of Track Disturbance (Report A). During the end of the process, the Claimant was to mark the holes that had just been drilled. The Claimant became agitated and left the job site without properly marking the rail with Report A information as required by CWR procedures. As a result of the Claimant's neglect of his duties after being given a directive and his failure to comply with the directive, a formal investigation was held. The Claimant was assessed a dismissal on August 15, 2022. Dismissal is warranted as the Claimant admitted guilt and had signed a "last chance waiver" just three months prior to the incident.

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 demonstrated willful disregard for Amtrak CWR procedures. The Claimant left the job early that day, before the job was completed, citing a medical condition related to his blood sugar. Another employee took over as EIC. The Claimant never received clear instruction on how to put down the cut-in markings and therefore did not even know they were required. He had never before worked under the new CWR procedures. Finally, the Carrier's decision to terminate the Claimant from service was excessive and unwarranted.

Upon a review of the record as a whole, the Board finds that the Carrier has met its burden of proof. Even though he may have had to leave the job for medical reasons, the Claimant did not follow the CWR procedures before he left the job and did not

properly turn over his responsibilities as Employee in Charge when he left. However, dismissal is excessive under the circumstances. We have removed the prior discipline upon which the Carrier relied as supporting progressive discipline. Thus, the Claimant has a clean disciplinary record and nine years of service. We therefore find that the dismissal should be reduced to a Final Disciplinary Action and a time-served suspension. The Claimant should be reinstated but with no back pay.

AWARD

Claim sustained in accordance with the Findings.

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.