

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45478
Docket No. SG-47743
25-3-NRAB-00003-221068**

The Third Division consisted of the regular members and in addition Referee J. Warren Dent when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Canadian National / Wisconsin Central (CN-WC)**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National Railway:

Claim on behalf of M. L. Cadman, for reinstatement to his former position with all seniority and benefits unimpaired, compensation for all time lost, including overtime, and any mention of this matter removed from his personal record; account Carrier violated the current Signalmen's Agreement, particularly Rule 17, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an Investigation held on September 8, 2021.” [Carrier’s File No. WC BRS 2022-00001, General Chairman’s File No. WC BRS 2022-00001, BRS File Case No. 5525, NMB Code No. 103 - Out-of-Service Discipline: Safety/Operating Rules]”

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 record, on the afternoon of July 31, 2021, the Claimant responded to a trouble call at the Kimberly Spur swing bridge in Appleton, Wisconsin. Arriving at the bridge, the Claimant noted the proximity sensors were indicating, but there was no lock light. Without physically inspecting all sixteen sensors to determine any underlying issue, the Claimant trusted the indicators and hit the bridge's reset button, giving the awaiting train crew a lock light and allowing the train to proceed over the bridge. After the train had passed, the Claimant cycled the bridge numerous times. The proximity sensors indicated each time the bridge closed, but not the lock light. Thinking the issue to be related to timing (all the sensors have to indicate within 10 seconds of each other to get a lock light) and not anything physically wrong with the bridge or the sensors, the Claimant waited for the train to return; when he again pushed the reset button to allow it to cross the bridge. The Claimant closed the ticket and departed the scene.

By notice dated August 23, 2021, the Claimant was directed to attend a formal Investigation on the charge that he allegedly failed to properly troubleshoot and repair a proximity sensor during a trouble call to the Kimberly swing bridge and to further ascertain whether any Company rules, regulations or policies were violated in connection with the incident. Following the Investigation held on September 8, 2021, and by correspondence dated October 7, 2021, the Claimant was notified that, as a result of the evidence adduced at the Hearing, he had been found guilty as charged. Pursuant to its Discipline Policy and considering his past discipline record, the Carrier made the decision to permanently dismiss the Claimant from its service.

Dissatisfied with the Carrier's decision, the Organization appealed in accordance with the controlling Agreement between the parties, which the Carrier denied. The normal grievance handling process followed, culminating in the appeal being conferenced with the highest Carrier Officer designated for that purpose, after which the parties' positions remained unchanged. Unable to resolve the dispute on the property, the Organization moved to place the matter before this Board for resolution.

The Board will first address the Organization's procedural objection regarding the Carrier's entering the Claimant's discipline history as a Hearing Exhibit,

contending such prejudiced the Claimant's right to a fair and impartial Investigation, fatally flawing the proceeding. It is well established that an employee's prior discipline may be entered on the record in a hearing but may be considered by the Carrier only after the charges at issue have been proven and then only to determine the quantum of discipline to be assessed. There is no indication on this record that the Carrier attempted to offer the Claimant's discipline history as proof of guilt in the instant matter.

As for the merits, the Organization maintains that the Claimant was not regularly assigned on this territory, only covering for the assigned maintainer, who was off. While he had taken prior calls to this bridge, the Claimant testified to none quite like this. While waiting for the train to return to the bridge, the Claimant cycled it multiple times in an effort to ascertain the source of the trouble. Ultimately, as the rails lined up and all appeared in order, and considering the fact that the train had crossed the bridge twice without incident, the Claimant decided it had to be a timing glitch (B&B Department jurisdiction) and closed the ticket. The Organization attributes the Claimant's actions to unfamiliarity, not willful disregard or gross negligence. In no way did the Claimant's actions warrant permanent dismissal. For the foregoing reasons, the Organization requests that the claim be sustained.

The Carrier maintains that the Claimant jeopardized the train crew's safety by resetting the lock light without thoroughly inspecting the sensors. The Carrier avers that the credible testimony and substantial evidence in the hearing transcript firmly established that the Claimant violated the cited rules. Furthermore, the hearing was fair and impartial, and the discipline assessed was appropriate and in accordance with progressive discipline. Thus, the Carrier urges the Board to deny the claim.

Based on the record as a whole, the Board concludes that the Claimant engaged in the charged wrongdoing. We also recognize that discipline should be used constructively, when possible, to rehabilitate and teach rather than merely to punish. The Claimant is a long-term employee – more than 20 years of service. Given the Claimant's tenure, in this particular case and under these specific facts, the Board finds dismissal excessive. In our opinion, a long-term suspension without pay will send the proper corrective message to the Claimant concerning the absolute necessity of compliance with the Carrier's rules. The Claimant shall be reinstated to his former position, with seniority rights unimpaired and without pay for time lost, subject to the usual and customary return-to-duty requirements.

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 30th day of May 2025.