

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 45630
Docket No. MW-48360
26-3-NRAB-00003-240039

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

(Brotherhood of Maintenance of Way Employes Division –
(IBT Rail Conference

PARTIES TO DISPUTE: (

(Soo Line Railroad Company (former Chicago, Milwaukee,
(St. Paul and Pacific Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The discipline [twenty (20) calendar day suspension served without pay as a First (1st) Major – Life Threatening & Conduct Unbecoming Offense] imposed upon Mr. E. Christenson, by letter dated September 21, 2022, in connection with an alleged violation of US Rulebook for Engineering Employees 1.6 Conduct on August 16, 2022 was on the basis of unproven charges, arbitrary, capricious, excessive and in violation of the Agreement (System File D-38-22-520-05/2022-00031282 CMP).

(2) As a consequence of the violation referred to in Part (1) above, the discipline imposed upon Claimant E. Christenson shall now:

“*** be set aside, and the Claimant be made whole for all financial and benefit losses incurred as a result of the violation. Such remedy includes:

1. Straight-time compensation for each regular workday lost, and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of his suspension from service. This amount shall not be reduced by any outside earnings obtained by the Claimant while wrongfully suspended.

2. Overtime pay for lost opportunities based on overtime pay for any position the Claimant could have held during the time he was suspended, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended from service.
3. Health & Welfare, dental, vision, supplemental insurance premiums, deductibles, and co-pays that Claimant would not have paid had he not been unjustly suspended from service.
4. Any and all other benefits to which entitled, but lost as a result of the Carrier's arbitrary, capricious, and excessive discipline in suspending the Claimant from service beginning September 22, 2022 and continuing through and including October 11, 2022.

* * *

As a remedy, this discipline shall be set aside, all notations of this discipline be expunged from all Carrier records, including the Claimant's personal record, and the Claimant shall be made whole for all time, compensation, and/or other benefits lost as set forth herein as a result of this assessment of discipline and attendance at the investigation hearing.”

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, Eugene Christensen, was employed by the Carrier on June 9, 2008 and currently holds a Track Inspector position. On September 21, 2022, he was assessed a 20-day suspension for allegedly violating the General Code of Operating Rule (“GCOR”) 1.6, Conduct; (6) Quarrelsome and (7) Discourteous, when he objected to his supervisor’s instructions to fix a track defect. The Carrier denied all appeals by the Organization.

In discipline cases, the burden of proof is upon the Carrier to prove its case with substantial evidence and, where it does establish such evidence, that the penalty imposed is not an abuse of discretion. The Board does not find any procedural error in the record that would negate a review of the merits.

Upon a careful review of the evidence and testimony of the witnesses, we find substantial evidence to establish that the Claimant violated Rule 1.6. On August 16, 2022, the Claimant objected to Roadmaster Rob LeDuc’s instructions to repair a track defect. The record provides credible testimony by Mr. LeDuc and establishes that, in the presence of numerous other employees, the Claimant said “I’m not putting bolts in. It’s not my fucking job”. The Claimant was sent home and a notice of investigation was issued on August 17, 2022. Nine employees provided corroborating testimony that the Claimant refused to follow instructions and used profanities. Where the Claimant believed he was not required to perform the assigned task, and absent an applicable safety or legal issue, the appropriate reaction was to adhere to the long-standing workplace practice of “work first, grieve later”.

The Claimant admitted to using profane language and not performing the assigned task. As such, we need not go further in our review of the record.

Having found that the record establishes the Claimant’s culpability, we move to our review of the discipline assessed and find it is not excessive. The Claimant has a less than stellar disciplinary record which contains numerous violations, including a previous suspension from service. We also find that the discipline imposed is consistent with the Carrier’s disciplinary policy. For the aforementioned reasons, we do not find the discipline imposed to be arbitrary or excessive.

AWARD

Claim denied.

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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 20th day of March 2026.