

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 45633  
Docket No. MW-48470  
26-3-NRAB-00003-240139

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 and Conduct Unbecoming Offense] imposed upon Mr. I. Ochoa, by letter dated October 28, 2022, in connection with an alleged violation of US Rulebook for Engineering Employees 1.6 Conduct on Friday, August 19, 2022, was on the basis of unproven charges, arbitrary, capricious and excessive and in violation of the Agreement (System File D-39-22-450-01/ 2022-0032026 CMP).
- (2) As a consequence of the violation referred to in Part (1) above, the suspension imposed upon Claimant I. Ochoa shall now be expunged from all Carrier records, including the Claimant’s personal record, the same as if he was never affected by this discipline and the Claimant shall now be made whole:

‘... for any wages, benefits, and/or travel reimbursement to which entitled, but lost as a result of the Claimant’s attendance at the investigative hearing and from the Carrier’s capricious, arbitrary, and excessive discipline. As a remedy for the violation, the suspension shall 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) **Any general lump-sum payment and retroactive and/or periodic general wage increases provided in any applicable agreement that became effective for the period Claimant was out of service.**
- 3) **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.**
- 4) **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.**
- 5) **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 November 29, 2022 and continuing through and including December 18, 2022."**

**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, Track Inspector Ivan Ochoa, was employed by the Carrier on April 16, 2012. On October 28, 2022, he was assessed a 20-day suspension for alleged dishonesty in violating the General Code of Operating Rule (“GCOR”) 1.6, Conduct, when he denied leaving the Carrier’s property while on duty. 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 in the record to establish that the Claimant violated Rule 1.6. The documentary evidence and testimony provided by Roadmaster Matthew Weller sufficiently establishes that the Claimant left his workplace while on duty without permission on August 19, 2022. When asked by Mr. Weller if he left the property the Claimant said he did not leave the yard. The Claimant denied telling Weller he did not leave the workplace, claiming he was asked how his day was and what duties he performed. The Claimant also testified, “. . . yes, I did leave property, but I did not do it maliciously without permission. I will leave it at that.”**

**The Carrier relied on the documentary evidence and testimony from Mr. Weller to find the Claimant was dishonest. Nothing in the record indicates the Carrier was arbitrary in its credibility assessment of the witnesses’ testimony. A review of the Claimant’s testimony supports the conclusion that it is less than reliable and given little credibility by the Carrier. As provided for by long standing arbitral precedent in the industry, absent any substantial evidence that the Carrier’s findings of credibility are arbitrary, we have no basis to ignore its conclusion. The**

**Board sits in review of the Carrier’s findings made on the property and does not make findings *de novo*.**

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 previous suspensions. We also find that the discipline imposed is consistent with the Carrier's policy. For the aforementioned reasons, we do not find the discipline imposed to be arbitrary or excessive.

**AWARD**

Claim denied.

**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.