

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43841
Docket No. MW- 45251
19-3-NRAB-00003-190039**

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

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

PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day suspension of Mr. D. Brunelle by letter dated November 10, 2017, based on allegations that he violated Pan Am Safety Rules PGR-D, PGR-J and P65(b) when the tamper he was riding purportedly failed to stop in time and collided with the regulator on July 31, 2017 was without just and sufficient cause (System File 17-01/MW-17-12 STR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Brunelle shall now have his record cleared and he shall now be compensated for any lost wages including overtime he missed as well as any missed benefits because of the Carrier’s improper discipline.”**

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.

On August 10, 2017, the Carrier issued a notice of hearing to Daryl L. Brunelle (Claimant) relative to an incident which occurred on Monday, July 31, 2017:

“This Notice of hearing is issued to develop the facts and place your responsibility, if any, in connection with the incident(s) outline below:

ALLEGED VIOLATION OF SAFETY RULE(S) PRG-D, PGR-J & P65(b)

On Monday, July 31, 2017, at approximately 0745 hours while acting as Tamper Operator on Zone D Surface Crew #2931 at MPS-13.13 on the Conn River Main Line in the vicinity of the Mount Tom Siding, you were following the Regulator when you allegedly failed to stop in time and collided with the equipment.”

After several postponements an Investigation was held on October 26, 2017. The Claimant was found responsible for the rule violations as charged and assessed a thirty (30) day suspension. The Organization filed an appeal on the Claimant’s behalf and the matter was handled in accordance with the Parties’ Agreement on property. This matter is now properly before this Board for final adjudication.

Glenn MacNeil, Track Supervisor for Conn River Main Line, served as the Carrier’s witness and charging officer in this case. MacNeil testified that he was alerted to an accident between two pieces of equipment, a tamper and regulator at or near MP 13.13 on the Conn River Main Line. The tamper was being operated by the Claimant and the regulator by Richard Breor. MacNeil testified that the employees were passing a private crossing (at MP 13.13) and approaching the Gatehouse Crossing (at MP 13.72). Both employees provided statements. According to the Claimant’s statement he was traveling at about 11 MPH and was 200 feet behind the regulator when Breor came to an abrupt stop. The Claimant indicated to MacNeil he was attempting to bunch up with the regulator in order to share the crossing lights at the Gatehouse Crossing. The

Claimant also wrote in his statement there was dew on the track which prevented him from avoiding the collision with the regulator.

According to MacNeil, the accident could have been prevented if the Claimant gave himself more distance behind the regulator. The Claimant was required to travel at restricted speed in order to be prepared to stop in half the visible distance of an object or obstruction. Furthermore, MacNeil testified, when reaching a crossing, the Claimant was required to perform a ‘stop and protect’ procedure and should not have been trying to get through the crossing with the regulator. Based on MacNeil’s assessment of the situation, the Claimant did not have a safe distance between the tamper and regulator and violated Rule PGR-D, PGR-J and P65:

“PGR-D Employees must exercise care to prevent injury to themselves or others. They must be alert and attentive at all times when performing their duties and plan their work to avoid injury.

PGR-J Employees must be observant and use common sense at all time.

P65 Track cars must be prepared to stop when approaching the following locations:

b. When following behind a train or other on-track equipment, track cars must be operated at a safe distance when moving on the same track and able to stop in one-half the range of vision.”

Breor testified he accidentally hit the emergency stop button which caused the regulator to stop unexpectedly. When that happened Breor’s equipment shut down right away and may have slid 10 to 20 feet. Breor corroborated the Claimant’s assertion that there may have been dew on the track which may have contributed to the Claimant’s inability to prevent the tamper from colliding with the regulator.

The Claimant testified at the Investigation and essentially stood by his statements from the day of the incident. The only difference was testimony about the distance at which he was traveling behind the regulator. At the Investigation the Claimant testified he was traveling 300-350 feet behind the regulator and not 200 feet as he indicated on

the day of the incident. He denies he was attempting to bunch with the regulator in order to be able to get through the crossing together. The Claimant contends there must have been dew on the track which prevented him from colliding with the regulator and that those conditions came up unexpectedly.

The Carrier argues the evidence presented supports a conclusion that the Claimant violated the rules as charged. Rules require that employees travel with sufficient distance to avoid collisions. Since a collision occurred, the Carrier argues, the Claimant could not have been far enough back from the regulator. At the time of this incident, the Claimant had fourteen (14) years of service with the Carrier and had run a tamper for about ten (10) years. Based on his experience, the Carrier contends, the Claimant should have known he was traveling too close to be operating safely.

The Organization argues the Hearing Officer rejected the Carrier's contention that Rule PGR-D had any bearing in this case based on the fact there were no injuries. The Claimant and Breor were the only witnesses to the incident and they both testified that there was a safe distance between the two pieces of equipment. The Organization contends the Claimant did everything he could to prevent a collision and that based on the weight of the equipment, the regulator could stop more quickly than the tamper. The Organization argues the Carrier failed to meet its burden of proof. If the Board finds the Carrier met its burden, the Organization maintains a thirty (30) day suspension is an excessive penalty under the circumstances.

The Board has carefully reviewed the record and finds no procedural errors which preclude us from reaching the merits.

The evidence of record establishes the Carrier presented sufficient evidence to support a finding that the Claimant violated P65. The Claimant was either 200 feet behind the regular, as indicated in his statement on the day of the incident or as many as 350 feet behind, as testified to at the Investigation. Either way, he was too close to stop given what transpired.

The Carrier has not presented sufficient evidence to support charging the Claimant with having violated Rules PGR-D or PGR-J. Rule PGR-D requires employees use care to prevent injury to themselves or others. There were no injuries in this case. Rule PGR-J requires employees to remain observant. There is nothing in the record before this Board that suggests the Claimant did not remain observant to the

track. As soon as he noticed that the regulator was stopped, he took appropriate steps to stop the tamper. The Board recognizes this incident was the result of unintentional actions when Breor accidentally hit the emergency stop button the regulator. This is a mitigating factor that must be considered. The Claimant has no prior discipline in his record. A thirty-day suspension is an excessive penalty given the charges proven against this Claimant. The Board finds a ten-day suspension more appropriate. The Claimant's thirty (30) day suspension shall be reduced to a ten (10) day suspension and Claimant is to be made whole for any lost straight time wages incurred during the additional twenty (20) days of suspension improperly imposed by the Carrier.

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 4th day of September 2019.