

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43855
Docket No. SG-45084
19-3-NRAB-00003-180503**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of P.J. Benton, for any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Level S, 30-day record suspension with a 1-year review period to 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 March 20, 2017.Carrier’s File No. 35-17-0020. General Chairman’s File No. 17-031-BNSF-188-SP. BRS File Case No. 15843-BNSF. NMB Code No. 106.”

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 held the position of Signal Maintainer in the Carrier's service. On February 13, 2017, the Claimant was given notice of an investigation in connection with the following charge:

"An investigation has been scheduled... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with alleged violations that occurred while you were working as Signal Maintainer (SMTR0396) at approximately 1340 hours, February 9, 2017, at or near MP 77.2 on the Seattle Subdivision, Vader, Washington, leading to a report that Machine X6000320 derailed when the switch, but not the frog, was lined for its movement. Alleged violations include but are not limited to failure to ensure that both switch and frog were lined for the intended route."

After a formal investigation on March 20, 2017, the Claimant was found in violation of MWOR 8.2, Position of Switches, and SSI 12(A).0, Turnouts Equipped with Two Switch Machines, and was assessed a 30-day record suspension with a one-year review period.

On February 9, 2017, the Claimant responded to a trouble call on the 1A Switch at Control Point (CP) Vader. After verifying that the 1A Switch was still an issue, the Claimant contacted the Employee in Charge (EIC) of the Form B and requested permission to share their track authority so that he could begin troubleshooting the 1A Switch with proper protection on the track, which was granted. The Claimant manually aligned the 1A Switch for straight through movement but did not also align the 1AF Switch, although they are interconnected.

Maintenance of Way Foreman Cox contacted the Claimant and requested that he realign both switches for straight through movement so that Track Machine X6000320 could pass through on the main line. The Claimant confirmed that both switches were aligned so the equipment began moving and Track Machine X6000320 successfully traversed through the 1A Switch. However, because the Claimant left the 1AF switch in crossover movement, the machine derailed.

The Carrier contends that the Claimant's failure to reconnect or manually align the 1AF Switch directly caused the derailment. The Carrier contends that a warning sign at the location reminds employees to concurrently align the swing nose crossing

manually when working on the 1A Switch. The Carrier contends that the Claimant disregarded his training and the warning sign and misaligned the switches. The Carrier contends that the level of discipline was appropriate for the Serious Violation.

The Organization contends that the Claimant was responsible for repair of the malfunctioning 1A Switch and he was only given authority to hand operate that switch. The Organization contends that the Claimant did not have authority to operate the 1AF Switch. Therefore, he was not responsible for the derailment. The Organization also contends that because the Machine Operator was disciplined, the Carrier acknowledged that he, not the Claimant, was responsible for the derailment. The Organization further contends that the discipline level was harsh and excessive.

The Claimant admits that he manually aligned the 1A Switch to straight through movement but did not also move the 1AF Switch from crossover movement. Because the switches are interconnected, movement of one affects the other. The Carrier posted a warning to remind employees of this interconnectedness. However, Claimant ignored the warning and failed to ensure both switches were aligned in the same direction.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

The Claimant admitted that he only aligned the 1A Switch when asked to align the track for the Track Machine to pass by. As a result, the machine derailed. Although he was responsible for responding to the trouble on the 1A Switch, his actions caused the switches to be misaligned. The Carrier presented substantial evidence that the Claimant was in violation of MWOR 8.2, Position of Switches, and SSI 12(A).0, Turnouts Equipped with Two Switch Machines. The imposed penalty of a 30-day record suspension with a one-year review period was neither harsh nor excessive for the violation that was proved.

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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 4th day of September 2019.