

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43900
Docket No. SG-44820
20-3-NRAB-00003-180246**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when the award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Illinois Central Railroad Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Canadian National (formerly Illinois Central):

Claim on behalf of N.S. Lowe, for reinstatement to service with compensation for all time lost, including overtime, with all rights and benefits that he would normally be entitled to, and with any mention of this matter removed from her personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 35, 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 January 5, 2017. Carrier’s File No. IC-BRS-2017-00005. General Chairman’s File No. IC003-17. BRS File Case No. 15754-IC.”

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.

This is the second of two claims involving separate accidents by the Claimant that occurred in the same vehicle within a few days (see also, Award No. 43899). At the time of the two incidents, the Claimant was assigned as a Signal Maintainer in the Coulterville, Illinois, area; he had less than five years' service with the Carrier.

On November 13, 2016, the Claimant was driving a Hy-Rail truck and pulled into a church parking lot to turn around. In backing up, he unknowingly backed into a standing water spigot. As he was driving out of the parking lot, the pastor of the church flagged him down and showed him that the pipe was bent. There was no other damage obviously apparent. After straightening the spigot, the Claimant drove off. He did not report the incident to his supervisor. As the Claimant testified at the investigatory hearing, "As far as me and the pastor was concerned, there was no issue, nothing was broke, nothing was damaged on the truck. ... Nothing was wrong. Nothing to report." The next day, the pastor at the church saw standing water around the spigot. He dug down and discovered that the impact had in fact broken the water pipe underground. He contacted the Carrier about the damage. The Claimant's supervisor did not hear about the incident until December 22, 2016, and on December 29, 2016, the Carrier issued the Claimant a Notice of Investigation for a hearing to be held on January 5, 2017.

On November 17, 2016, the Claimant was working at and around the Winkle Road Crossing on the St. Louis Subdivision, driving the same Hy-Rail vehicle that he had driven on November 13, 2016, when he backed into the standing spigot at the church. At approximately 9:30 p.m., he backed up into a crossing flasher mast, damaging both the vehicle and the signal mast. Initially the Claimant did not realize that he had made contact with the equipment, and he drove away. However, when he returned a short time later, looking for his cell phone, he discovered the damage. The left rear bumper of the truck was dented. The junction base on the signal mast was broken, as were two arms on the light. Other parts of the signal were bent. The Claimant immediately contacted his supervisor, Mr. Healy, and followed the prescribed protocol for reporting an accident. The Incident Report summarized what happened:

“Maintainer Nathan Lowe was working on winter prep at Winkle Road MP 53.31 on the St. Louis subdivision. He was parked in the crossing driveway (front end of the truck facing away from the road), waiting on a train. He was going to set his truck on the track and Hy-rail to the rest of his locations. He planned to finish the winter prep. Maintainer Lowe backed out and headed to the next crossing north. At the end of the driveway there is a steep incline. Nathan said he had to give it a little extra gas to get up the incline onto the road. He got onto the main highway and could not find his company cell phone. He then turned around and went back to Winkle Road. As he approached the crossing, he noticed the crossing flasher lying on the ground across the road. He did not know he had hit the flasher mast when backing out. Mr. Lowe then noticed the dent in the left rear bumper. He then notified his supervisor Gerald Healy of the incident at 21:38 on November 17, 2016. He informed Mr. Healy he takes full responsibility for his actions. Jovan Jevtovic asked was he in a hurry, not paying attention, or just driving fast. He replied all of it....”

The Carrier issued a Notice of Investigation for this incident on November 22, 2016. The hearing was originally scheduled for December 1, 2016, but was mutually postponed.

On January 5, 2017, separate investigatory hearings were held for the two incidents.¹ Testimony and evidence in the record support the version of events described in the Incident Report for the November 17 incident. By letter dated January 12, 2017, the Carrier issued its decision regarding the November 17, 2016, incident. The Carrier determined that the Claimant had violated its Vehicle Backup Policy, Chief Engineer Bulletin No. 22, US Operating Rules General Rule C, “Alert and Attentive,” and USOR General Rule H, “Furnishing Information and Conduct.” The discipline assessed was Dismissal from Service.

The Organization filed a timely appeal. The parties having been unable to resolve the matter through the grievance process, it was appealed to the Board for a final and binding decision.

¹ According to the transcripts of the hearings, the hearing for the November 17, 2016, incident started at 9:00 A.M. and the second hearing, for the November 14, 2016, incident began at 2:30 P.M.

According to the Carrier, the record establishes that the Claimant was guilty of violating the rules. He admitted to backing into the signal mast, damaging the vehicle and the signal equipment. He did not perform a safety circle check as required by the Vehicle Backup Policy, and he was not alert and attentive. The investigation was fair, and the discipline assessed was warranted. The Claimant's record shows that he has a history of making bad decisions, including falsification of tests and another vehicle accident that occurred only a few days before the one at issue here. The Carrier cannot afford to have in its employ an individual who continually fails to abide by the rules and who is careless while performing some of the most basic elements of his job, such as backing up a vehicle. The Organization contends that the Carrier has failed to provide substantial evidence to support its charges. The broken crossing flasher is evidence only of an accident, not a rule violation. In addition, the Carrier has not proven that the Claimant violated USOR Rule H. He was not guilty of willful neglect or gross carelessness, and he reported the accident immediately as required by procedures. Moreover, the discipline assessed is arbitrary, excessive and unwarranted. The Claimant could have coached and counseled the Claimant to provide him with further knowledge and additional safety precautions it felt were necessary; there was no need to terminate his employment.

There really is no dispute about the facts of what happened at the Winkle Road Crossing on the evening of November 17, 2016. So the issues for the Board are whether the Claimant's conduct violated any of the rules cited by the Carrier and whether dismissal from service was an appropriate level of discipline. This was the Claimant's second backing-up accident in a five-day span. Moreover, the second accident, on November 17, 2016, was much more serious than the November 13 incident. It was no bent water pipe: Claimant backed into the signal mast with enough force to shear it off at the base, causing significant damage. One would expect that, having backed into a water spigot only a few days before, the Claimant would have exercised additional caution when backing up thereafter. Moreover, the signal mast was tall enough that, had the Claimant been paying attention, it would have shown clearly in the rear view mirror of the Hy-Rail truck, unlike a water spigot, which could easily be overlooked due to its short height. Finally, the Claimant had had to wait a while for a train to pass. During that time, he should have become aware of the signal mast behind him, but he did not. As he waited, he could have performed a safety check as required by the Vehicle Backing Policy, but he did not. Under the circumstances, the Carrier's conclusion that he had not been alert and attentive, to the point of gross carelessness,

was not unreasonable. The first incident on November 13, 2016, warranted discipline but not termination. A second accident, occurring under very similar circumstances (backing up and hitting an object without realizing it), only four days later indicates that the Claimant was unwilling or unable to pay attention to his driving, a fundamental responsibility in his position. The Carrier's decision to terminate his employment was not an abuse of discretion.

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 28th day of January 2020.