

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44210  
Docket No. SG-45073  
20-3-NRAB-00003-180445**

**The Third Division consisted of the regular members and in addition Referee Patrick Halter when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Brotherhood of Railroad Signalmen**  
**(Kansas City Southern Railway Company**

**STATEMENT OF CLAIM:**

**“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Kansas City Southern:**

**Claim on behalf of R. Owen, for reinstatement to his former position with compensation for all time lost, including overtime, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 47, 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 March 3, 2017. Carrier’s File No. K0617-7210. General Chairman’s File No. 17-020-KCS-185. BRS File Case No. 15768-KCS. NMB Code No. 173.”**

**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 February 24, 2017, the Claimant's duties as a Signal Maintainer were to disable a highway grade crossing for a maintenance of way contractor crew performing construction and maintenance work near the Maxwell Creek Road Crossing (MCRC).

The Claimant arrived at the crossing in his personal vehicle (POV); he saw damaged bonds on the island circuit crossing. The contractor reported to the Roadmaster that the Claimant fouled the track without on-track protection and performed his work wearing tennis shoes and a hardhat without a face shield. The Roadmaster informed the Signal Supervisor of the contractor's observations.

When the Supervisor arrived at the crossing, he entered the signal bungalow and discovered crossing equipment with jumpers attached to it and six (6) rail joints requiring thermal welds; the Supervisor contacted another Signal Maintainer to complete the unfinished work and, as instructed by the Director - Signal Operations, the Supervisor directed the Claimant to report for a reasonable cause drug and alcohol test at the Garland Depot. While waiting for the test to be administered, the Claimant provided a written statement acknowledging he reported to MCRC in his POV and fouled the track without on-track authority and performed work without personal protective equipment (PPE).

On February 27, 2017, the Carrier issued a notice of formal hearing to the Claimant stating, in part, as follows:

- “● Your alleged failure to properly perform your duties in a safe and proper manner;
- Your alleged failure to complete a job briefing form;
  - Your alleged failure to receive a job briefing from the EIC;
  - Your alleged failure to obtain on-track safety protection before fouling the track;
  - Your alleged failure to have the proper form filled out for the highway grade crossing that was out of service;
  - Your alleged failure to wear the proper PPE for all job duties you were performing.”

On March 3, 2017, a hearing convened. After considering the transcript of that proceeding, the Carrier dismissed the Claimant from service for violating the following rules:

- **Safety Through Awareness and Responsibility Engineering**  
**STAR Rule E-25 – Personal Protective Equipment and Clothing**

**3. Footwear**

- a. Wear footwear that conforms to the following criteria[.]**

**Engineering Eye and Face Protection Chart**

**Abrasive grinding      Basic Requirement: Faceshield**

- **Maintenance of Way and Signal Department On-Track Safety Roadway Worker Rules 21.1 - All Employees Must Ensure That They Receive a Job Briefing Before They Foul Any Track. The Job Briefing Must Include the following:**

- 1. Plan the job briefing and develop your own work plan to include the following: [five (5) items]**
- 2. Consider existing and potential hazards that might be involved as a result of: [eight (8) items]**
- 3. Consider how work assignments will be made: [four (4) items]**
- 4. Conduct the Job Briefing and explain work or task to employees: [seven (7) items]**
- 5. Discuss existing or potential hazards and ways to eliminate or protect against them [five (5) items]**
- 6. Job Briefing for Special Conditions [three (3) items]**
- 7. Follow up by Supervisor [three (3) items]**
- 8. Individual Responsibility [one (1) item]”**

- **On-Track Safety Rules 22.2 - Do Not Foul Tracks Except When Necessary; Confirm On-Track Safety Is Provided Before Fouling Any Track**

Employees shall not foul any track except when necessary in the performance of duty, must verify that proper on-track protection is being provided prior to fouling any track, and know the identity of the employee in charge of on-track safety.

- **On-Track Safety Rules 23.0 - Methods To Be Used To Protect Workers Fouling Any Track**

**Do not foul tracks unless authorized by one of the following:**

**A track bulletin Form B (*Refer to GCOR 15.2 Rules*)**

**Track and Time (in CTC Territory) (*Refer to GCOR 10.0 CTC Rules*)**

**Block Register Territory (BRT) (*Refer to GCOR 6.15 BRT*)**

**Branch Line Territory (BLT) (*Refer to Timetable and S.I. 6.14.1 BLT Rules*)**

**Work and Time (DTC) (*Refer to KCS 116.0 DTC Rules & GCOR DTC 16.0 Rules*)**

**Train Coordination (*Refer to GCOR 6.3.1 Rules*)**

**Special Instructions or General Orders (*Refer to GCOR 1.3.1 & 4.0 Rules*)**

**Individual Train Detection (ITD) (*Refer to RWP 25.1.1 Rules*)**

**Foul Time (*at Manual Interlocking - or - Control Point*)**

**Track Warrant (*Refer to GCOR 14.0 TWC Rules*)**

**Train Approach Warning (Watchman/Lookout) (*Refer to RWP 23.4 Rules*)**

**Inaccessible Track (*Refer to RWP 23.2 Rules*)**

### **Requesting Authority**

The employee requesting authority must be qualified on the KCS Operating Rules and must tell the train dispatcher or control operator exactly where the main track or siding will be entered. The employee in charge will ensure equipment or employees do not occupy or foul track until authority is received.”

On May 6, 2017, the Organization appealed the Claimant's dismissal alleging a violation of Rule 47 - Discipline/Investigations by denying the Claimant a fair and impartial hearing. The BRS asserts it did not have sufficient time to prepare a defense because the Carrier did not identify specific rule(s) allegedly breached by the Claimant in the investigative notice and the charge "failure to properly perform your duties in a safe and proper manner" is vague. The BRS alleged a due process violation when it was could not examine the witnesses with personal knowledge of this incident lodging accusations against the Claimant. The penalty of dismissal is harsh and excessive, BRS states, because the Carrier did not meet its burden of proof. That is, the Supervisor relied on hearsay comments from the Roadmaster and, in turn, the contractor.

The Carrier denied the appeal asserting the Claimant received a fair and impartial hearing with due process. The notice described the incident, location, and date. There is substantial evidence given the Claimant's written statement admitting he fouled the track without on-track protection; the Claimant was required to obtain track protection because the contractor was relinquishing its protection; the Claimant did not undertake a job briefing with the contractor's Employee-in-Charge.

This claim was advanced on-property in the usual manner, up to and including the Carrier's highest official designated to handle this matter. A conference convened but the parties' positions remained unchanged. Thereafter, the Organization referred the claim to the Board for adjudication.

As for Rule 47 - Discipline/Investigations, the Board finds that the notice of hearing identifies the date of the incident (February 24, 2017), incident location (at or near Milepost C582.72 at Maxwell Creek Road, Wylie, TX at approximately 2:12 p.m.) and subject matter under investigation (no on-track safety protection or PPE among other items). The notice conveys sufficient information for the Organization to prepare a defense. The rules allegedly breached by the Claimant were presented at the hearing, subject to witness testimony and cross-examination. Given these circumstances, the Board finds that the Claimant was not denied due process and he received a fair and impartial hearing.

The BRS asserts that the Carrier did not carry its burden of proof because the Supervisor did not observe the incident and relied on hearsay comments, e.g., contractor informed the Roadmaster of its observations about the Claimant in his

POV and working without on-track authority and no PPE and the Roadmaster repeated the contractor's observations to the Supervisor.

The Board, fully apprised of the Claimant's testimony and arbitral precedent submitted by the BRS, finds that there is substantial evidence of probative value establishing the Claimant's culpability. For example, the Supervisor contacted the Claimant by telephone and stated he had been informed the Claimant was working in tennis shoes with no face shield and in his POV and the Claimant confirmed this information and acknowledged them in his written statement:

**"I came in my personal vehicle and attempted to survey and repair damage to the signal circuit which had been caused by the track repair crew contractors.**

**I knowingly did so without the benefit of any formal track protections and without proper safe wear.**

**I also failed to use gloves or a protective face shield while re-attaching the "island wires" through thermo-chemical bonding."**

The Claimant acknowledged he was not properly dressed for signal work; he was not wearing a face shield, boots, or gloves. This violates Safety Through Awareness and Responsibility Engineering STAR Rule E-25, Personal Protective Equipment and Clothing.

The Claimant acknowledged he did not have on-track protection when he fouled the track. Fouling the track without protection violates On-Track Safety Roadway Worker Rule 22.2 - Do Not Foul Tracks Except When Necessary; Confirm On-Track Safety is Provided Before Fouling Any Track. The Claimant's violation of Rule 22.2 is a dismissal offense under the Discipline Policy.

The Claimant attached island circuit wires to the track without on-track protection in violation of On-Track Safety Roadway Worker Rule 23.0 - Methods To Be Used to Protect Workers Fouling Any Track. The Claimant's violation of Rule 23.0 is a dismissal offense under the Discipline Policy.

The Claimant's discussion with the contractor was sparse and limited; it was not a job briefing as described in Roadway Worker Rules 21.1 - All Employees Must Ensure That They Receive a Job Briefing Before They Foul Any Track where there

are eight (8) headings and thirty-six (36) items to consider. The Claimant attempted to complete his repairs prior to the contractor releasing its track authority instead of obtaining his own track authority. His actions are considered in the context of Award 78 by Public Law Board 5622: "Failure to secure proper on-track protection is about as fundamental a safety rule violation as is known in the industry."

The multiple rules violations by the Claimant support the charge that he did not perform his duties in a safe and proper manner. These offenses are exacerbated by the Claimant having committed similar major infractions, as determined by this Board in a separate proceeding, on February 21 or three (3) days prior to these dismissible offenses of February 24.

Since there is substantial evidence showing the Claimant violated safety rules which, singularly or jointly, are cause for dismissal under the Discipline Policy. Dismissal is not harsh or excessive. The Board will not disturb the dismissal and, in doing so, will deny the claim.

**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 30th day of September 2020.