

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44324
Docket No. SG-45491
21-3-NRAB-00003-180294**

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

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(Connex Railroad LLC

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Connex Railroad, LLC:

Claim on behalf of K. SeQueira, for reinstatement to service 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 Rules 47 and 48, 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 26, 2017. Carrier’s File No. Dismissal of Keinar SeQueira. General Chairman’s File No. SCL-03-06-17D. BRS File Case No. 15739-Connex.”

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 Carrier initially raises a procedural argument that the Organization has failed to cite any applicable rule for the instant matter. According to the Carrier, the cited rules are irrelevant to the instant claim. On the merits, the Carrier points out that Claimant self-reported damaging a switch and notifying his supervisor, the Signal Manager. When the Signal Manager called Dispatch en route to the location, Dispatch informed that they had no idea that Claimant was working in the interlock and that he had never requested protection.

The Signal Manager inspected the location. He found indication that the switches had been lubricated. However, to lubricate the switches, Claimant would have to enter the interlock, thereby placing himself in danger and violating the following rule:

“Individual Train Detection, Train Approach Warning, and Train Coordination

A lone worker may use Individual Train Detection for on-track safety when he or she:

- 5. Is not performing work in an interlocking, control point, or remotely controlled hump yard.”**

The Organization maintains that there is no substantial evidence in the record to support the discipline. Claimant maintained that he did not enter the interlock, rather, he sprayed the switch from outside the prohibited area. He had a pump sprayer on the truck and used that in order to avoid being in the foul.

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 Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier’s actions were an abuse of discretion.

Here, the testimony of the Signal Manager establishes that Claimant was not trained on oiling switches by spraying them from afar. Further, the Signal Manager

was on scene and saw the lubricated switches. If Claimant sprayed the switches from a distance, then oil would have been on the surrounding rails and surfaces. It was not. The Signal Manager's conclusion that Claimant was lubricating the switch from within the interlock is supported by the record.

The Carrier has proven that Claimant committed a serious safety violation. A review of the record in the instant matter indicates that the Carrier did not abuse its discretion in the imposed discipline of removal from service.

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 6th day of January 2021.