

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44347
Docket No. MW-45636
21-3-NRAB-00003-190564**

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

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

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK) –
(Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [ten (10) day suspension, twenty-four (24) month training program and disqualification from AMT-2 Protection/Clearance duties] imposed on Mr. R. Anderson, by letter dated July 19, 2018, for allegedly failing to ensure the limits of Clearance Number 1369 were adhered to and allowing the pantograph to violate the minimum approach distance on March 3, 2018 was without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SD-5684D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Anderson must be exonerated of all the charges and compensated for all lost straight time and overtime hours resulting from his ten (10) day suspension.”**

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 has established and holds seniority within the Carrier's Maintenance of Way Department. At the time of the incident here, the Claimant was assigned as a Lineman Class A.

On Saturday March 3, 2018, an ET crew was inspecting the signal line on #1 track at MP 86.5 on the NYP line. The Claimant was the designated Amtrak A-Man and was responsible for obtaining electrical clearances on whatever relevant catenary lines (trolley and signal lines) the ET crew needed to come within three feet of, in the commission of their work.

At Mile Post 86.5, Machine Operator Ostrowski raised a pantograph into the overhead 901 catenary line where the TIC test on the signal line was about to be performed, tripping the 901 trolley. It was discovered that the Cat Car was west of the limits of its clearance. During the Claimant's call with his supervisor, the supervisor concluded that the Claimant was unaware of the Car's location. During the Carrier's initial investigation, they learned that Ostrowski stated the Claimant gave him permission to raise the pantograph but the Claimant denied doing so.

On March 28, 2018, the Claimant was given notice of an investigation in connection with the incident occurring on March 3, 2018 and the Claimant's alleged:

- 1) Violation of Amtrak's 'Standards of Excellence' pertaining to the section entitled Safety, Attending to Duties, and Professional and Personal Conduct...

* * *

- 2) Violation of Amtrak's 'ET Electrical Operating Instructions-AMT-2' manual, in particular Instructions 6.201 and 6.202.
- 3) Violation of Amtrak's 'Electric Traction Standard Operating Instructions' Instruction No. 211 (Electrical Clearance Procedure).

After a formal investigation on July 10, 2018, the Claimant's alleged violations were sustained, and he was assessed a ten-day suspension.

The Carrier contends that it has presented substantial evidence showing that the Claimant failed to ensure the limits of his clearance were adhered to and that he allowed the pantograph to violate the minimum approach distance. The Carrier contends that the Claimant's failure to adhere to his limits caused damage to the pantograph.

The Carrier contends that it has shown that the Claimant failed to follow its Standard Operating Instructions regarding raising a pantograph. Furthermore, it is the Hearing Officer's responsibility to weigh the conflicting testimony and to determine the credibility of witnesses. The Carrier contends that the determination should not be disturbed so long as it is based on evidence in the record.

Finally, the Carrier contends that a ten-day suspension is not excessive for the Claimant's violation, his short seniority, and the severity of the violation.

The Organization contends that the Carrier has failed to present substantial evidence that the Claimant directed Ostrowski to raise the pantograph. The Organization points out that no one testified to a conversation in which the Claimant approved this action; instead, the record shows that the Claimant was on the telephone obtaining additional clearance and was aware of his limits. The Organization contends that this incident was caused by Ostrowski's false assumption that the Claimant had okayed his actions.

The Carrier has presented substantial evidence of the Claimant's guilt. Although his testimony contradicted Ostrowski's testimony, resolution of credibility questions and conflicting testimony is the province of the Hearing Officer, who has heard the testimony and observed the witnesses first-hand. As an appellate tribunal, the Board must defer to such judgments so long as there is substantial evidence to support the Hearing Officer's findings. Here, the Claimant's denials were found not to be credible. This Board will not overturn those findings, as there is substantial evidence in the record to support them.

In addition, the Board does not find that the penalty of a ten-day suspension was excessive, given all the circumstances of the case.

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.