

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44623
Docket No. MW-45821
22-3-NRAB-00003-200149**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

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

PARTIES TO DISPUTE: (

**(The Kansas City Southern Railway Company
(former Gateway Western Railway Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [sixty (60) day suspension - thirty (30) day actual and thirty (30) day record] imposed upon Mr. L. Ludlow, by letter dated October 18, 2018, for alleged violation of Maintenance of Way and Signal Department Rules 30.2.3 – Movement of On-Track Equipment was excessive and without just and sufficient cause [System File 18 10 18 (046)/2018-0562 KCS].**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Ludlow’s record shall be exonerated of the charges leveled against him and he shall be compensated for all wage loss sustained as a result of the Carrier’s action.”**

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.

After investigation held October 8, 2018 and by letter dated October 18, 2018, the Claimant – an employee in the Carrier’s service for 14 years – received a 60-day suspension (30 actual) for failing to perform his duties in a safe and proper manner resulting in damage to a hot journal detector on September 23, 2018.

On the date of the incident, the Claimant was working as a Machine Operator on Gang 506 – an assignment he held for over three years. Tr. 33-34. For approximately one year, the Claimant operated a TRIPP Inserter. Tr. 34.

The Claimant testified that he was aware of instructions from the Assistant Forman for his gang to skip over a hot journal detector. Tr. 36. The Claimant further testified that he was aware of the location of the detector. Id.

According to the Claimant, when going over road crossings “I just pick my workheads up on both side[s], move over the crossing, and then put them back down.” Tr. 36. However, the Claimant states that on the day of the incident, he picked up the workhead too high on the left side of the TRIPP Inserter which caused it to shift down on the right side and the result was that the TRIPP Inserter struck the hot journal detector – “I just pretty much bumped it and I was stopped and it broke off.” Tr. 40. The Claimant further testified that he could have secured the workheads before traveling over the detector. Tr. 37. According to the Claimant, when the TRIPP Inserter struck the scanner “I saw it ... I was actually stopping when it hit.” Tr. 38.

Substantial evidence shows that the Claimant failed to comply with the requirements of Rule 30.2.3 (“All On-Track equipment must be prepared to stop when approaching any obstruction ...”). The Claimant did not properly secure the workheads on the TRIPP Inserter and stop in sufficient time which caused the machine to strike the hot journal detector.

The Claimant’s disciplinary record shows a prior 30-day suspension (5 actual) from an incident in May 2016 for violation of the same rule. Carrier Exhibit I at 2. A 60-day suspension (30 actual) in this case was progressive and not arbitrary.

Third Division Award 30562 cited by the Organization does not change the result. In that case a 30-day suspension was reduced to a letter of warning because other employees failed to advise the charged employee of a cable hanging at less than a safe vertical clearance. Those mitigating factors are not present in this case.

The claim shall therefore be denied.

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 15th day of December 2021.