

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44841  
Docket No. MW-47161  
23-3-NRAB-00003-210835**

**The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.**

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

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline [thirty (30) day Level S record suspension] imposed upon Mr. A. Stotts, by letter dated August 4, 2020, for alleged violation of MWOR 8.3 Main Track Switches and MWOR 8.2 Position of Switches was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-20-D040-16/10-20-0210 BNR).**
- (2) The appeal\* as presented, by letter dated October 20, 2020, to General Director Labor Relations Joe Heenan shall be allowed as presented because said claim was not disallowed by Mr. Heenan in accordance with Rule 42.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant A. Stotts shall be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses and benefits.**

**\*The initial letter of appeal will be reproduced within our initial submission.”**

**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.

**Factual Background:**

At the time this case arose, the Claimant was the employee in charge of his gang. He had 25 years of service. The Carrier held an investigation on July 16, 2020, on the charge that he failed to lock a main line switch on May 19, 2020. Following investigation, the Claimant was found to have violated MWOR 8.3 Main Track Switches, and MWOR 8.2 Position of switches. He was issued a 30-day Level S record suspension, which the Organization contests here.

The applicable rules state as follows in pertinent part:

**8.2 Position of Switches**

The employee operating the switch or derail is responsible for the position of the switch or derail in use. Movement must not foul an adjacent track until the hand operated switch or derail is properly lined. Do not operate switch that is tagged. If the switch is spiked, do not remove the spike unless authorized by the same craft or group that placed it.

Employees operating switches and derails must make sure:

- The switches and derails are properly lined for the intended route
- The points fit properly and the target, if so equipped, corresponds with the switch's position

- When the operating lever is equipped with a latch, they do not step on the latch to release the lever except when operating the switch
- After locking a switch or derail, they test the lock to ensure it is secured
- The switch or derail is not operated while equipment is fouling, standing on, or moving over the switch or derail
- When moving over a switch, the switch remains lined for the movement until the equipment has moved beyond the fouling point of the adjacent track
- When practical, employees must see that the switches and derails near on-track equipment are lined properly.

### **8.3 Main Track Switches**

The normal position of a Main Track switch is for Main Track movement, and it must be lined and locked in that position. At points where double track begins, the normal position of a spring switch is for movement with the current traffic.

However, the Main Track switch may be left open:

- Within Restricted Limits, as outlined in Rule 6.19.1 (Protection in Restricted Limits by Lining Switch).
  - Within ABS limits. as outlined in Rule 16.19.5 (Protection in ABS By Lining Switch).
  - When temporarily lined for immediate movement
- or
- Within TWC territory, when authorized by track warrant, Track Warrant protection must be provided for this condition. The switch must not be considered restored to normal condition until the train dispatcher is notified by an employee at that location.

On Main Track switches (if equipped), the target will be red and perpendicular to the track if the switch is lined in other than its normal position.

Before reporting clear of a track warrant, track and time or track permit, Main Track switches must be lined and secured in the normal position.

Do not open hand operated Main Track switches, except as instructed by the employee in charge. The employee in charge should avoid transferring authority or responsibility to hand operate Main Track switches whenever possible. When it is necessary to transfer such authority or responsibility, the employee in charge must ensure that the switch is lined and secured in normal position before releasing Main Track authority.

The position of the switch must be determined by the employee in charge by making a visual inspection or by communicating with the employee operating the switch. When communicating the position of the switch, the information must be acknowledged and repeated by the employee in charge.

An employee restoring a hand operated Main Track switch to the normal position must remain at the switch location (in view of the switch) until the switch position briefing has been conducted with the employee in charge.

Employees who operate Main Track switches using Visual Detection of Trains must observe the position of the switch and ensure that the switch is lined and secured in the normal position before leaving the area.

**Position of Organization:**

The Organization denies that the Claimant operated or restored the switch in question and argues it must have been altered by someone else. In support of this contention, it notes that the position of switches form plainly says that the Claimant did not operate or restore the switch in question. The Hearing Officer admitted this during the investigation:

TOM ZERR: Okay. Um all right. So that shows that he clearly identified the switch but he did not operate it or restore it.

Claimant testified as follows:

**ANDREW STOTTS:** ‘I guess in a nutshell, I didn’t operate the switch that day. We did not go out that day. We did not work on the mainline that day. We were broke down. We fixed sandwich pads on that uh on the tamper. We uh fixed proximity switch. It’s all in the in my report.

The Organization notes he will never qualify again because of this incident, and argues that if holding track authority requires checking every switch, there will be huge delays. In its view, because the Claimant never touched it, he cannot be found to have left it unlocked.

**Position of Carrier:**

The Claimant, a foreman of a surfacing gang, held his authority until 1:44 pm on May 19, 2020. His roadmaster received a call at 5 p.m. that same day from the foreman of a neighboring section, advising that the main track switch was not locked. Main track switches have to be lined and secured before track authority is released. The Carrier argues that the Claimant was one of two Maintenance of Way employees with a track authority for that area, but he was the last one to clear or release his authority. It contends that although the Claimant testified he did not throw the switch, he was bound to check the switch to ensure that it was properly lined and locked per MWOR 8.2-Position of Switches and MWOR 8.3 Main Track Switches. In its assessment, the Claimant was responsible for the status of the switch, and insofar as it was unlocked, he breached his duty and is subject to disciplinary action.

**Analysis:**

Rule 8.2 begins by saying “The employee operating the switch or derail is responsible for the position of the switch or derail in use.” This flat statement unquestionably places responsibility for the position of the switch on the switch operator. It is uncontroverted that the Claimant did not operate the switch.

Rule 8.3 Main Track Switches states: “Before reporting clear of a track warrant, track and time or track permit, Main Track switches must be lined and secured in the normal position.” Rule 8.3 does go on to state that “When it is necessary to transfer such authority or responsibility, the employee in charge must ensure that the switch is lined and secured in normal position before releasing Main Track

authority.” It further states: “The position of the switch must be determined by the employee in charge by making a visual inspection or by communication with the employee operating the switch.”

The Claimant was the employee in charge, and held track warrant authority. The rule makes it clear that it is his responsibility to make sure the switch is in the proper position when that authority is released. This responsibility is squarely placed on the shoulders of the employee in charge, and cannot be shifted to the employee operating the switch. As a result, the Claimant has been shown to be in violation of Rule 8.3. This is a serious safety rule: a switch left open on a main track can have dire consequences. Even though the Claimant at no time touched that switch, he was responsible for it being left in the correct position when he transferred his track authority.

The Organization argues that this rule will result in delays and inefficiency. Though this may be entirely true, managing in an efficacious manner is the responsibility of the Carrier. If enforcement of the rule proves burdensome, then that is a problem for the Carrier to address. This Board is not the proper body to address such concerns.

**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 10<sup>th</sup> day of March 2023.