

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45092
Docket No. MW-47267
24-3-NRAB-00003-220328**

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: (
(Keolis Commuter Services

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

(1) The discipline [twenty (20) day suspension effective immediately, one (1) year disqualification from assistant foreman and foreman positions beginning on May 1, 2021 and last and final warning] imposed upon Mr. P. Taylor, by undated letter (following a ‘Decision Letter’ dated April 28, 2021), for alleged violation of Keolis Code of Conduct: Rule 1 - Knowledge of the Rules, Rule 8 - Behavioral Expectations for KeolisCS Employees and Prohibited Behaviors, Rule 9- Safety, Rule 17 - Attending to Duties and for alleged violation of the NORAC and RWP Rules in connection with his alleged failure to attend to his duties by not ensuring that the switch was properly lined prior to the hi-rail track car passing over it, resulting in the hi-rail truck derailling on March 29, 2021 on the Franklin Branch was completely unacceptable, arbitrary, capricious and excessive (Carrier’s File BMW 21.105 KLS).

(2) As a consequence of the violation referred to in Part (1) above, Claimant P. Taylor shall now ‘* be placed back into service effective immediately, with all lost straight time, overtime, double-time wages, credits for vacation, credits for retirement, and any other benefits that are applicable to him under our Collective Bargaining Agreement with all charges fully withdrawn. ***”**

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:

On March 29, 2021, Claimant was traveling east on the Franklin Branch in a hi-rail vehicle when the vehicle traversed through an improperly lined switch causing the vehicle to derail at Sprague Street Interlocking and sustain damage. He protested the resulting disciplinary action and his claim has been processed to consideration by this Board.

Position of Carrier:

While inspecting track, an employee is expected to watch the track and observe switches to be sure that they are properly lined. Employees are trained not to use a tablet while inspecting track. When the hi-rail vehicle Claimant and Foreman Perryman were riding in arrived at the wrongly lined switch, Claimant was entering data into Trapeze, which was a work-related app on his Keolis CS provided tablet; he was not checking to ensure the switch properly lined. The speed of Claimant's hi-rail vehicle exceeded the speed limit by six miles per hour, and the hi-rail vehicle slid through the unlined switch and derailed, causing damage to the hi-rail vehicle.

On March 12, 2021, just days before the incident at issue here, Claimant had accepted a waiver, including a 10-day suspension served, plus 10 days deferred suspension for failing to properly call clear of an interlocking signal, thereby fouling the interlocking limits. As part of that discipline, Claimant was sent to take a refresher NORAC class.

Position of Organization:

The Organization maintains the Carrier violated Claimant's express due process rights when it failed to comply with Rule 15(2): "An employee and his representative shall be given written notice in advance of the investigation, such notice to set forth the specific charge or charges against him." The Carrier's April 1, 2021 Notice of Investigation did not specifically state that Claimant was formally charged with violating any rules regarding the use of a trapeze device. Yet, the Carrier continuously asserted Claimant should not have been using a trapeze device while on the tracks. Any reference to the use of a trapeze device was improper as Claimant was not charged with any such violations in the Notice of Investigation.

It is critical to note that the improperly lined switch was the responsibility of the dispatcher on duty. This dispatcher gave Foreman Perryman permission to transit through the working limits, but the dispatcher failed to properly line the switch for that movement. Claimant was not responsible for the derail because at the time he was performing the duties of an INR foreman on the Trapeze device; he could not stop the truck because he was not driving. This was confirmed by Carrier witness Brousseau. For the Carrier to assign an employee outside of his bid position and then improperly attempt to discipline him for something that was entirely out of his control is completely unacceptable. The Trapeze is a Carrier authorized device and there are no rules which prohibit its use for reporting inspection information while performing track inspection duties.

Analysis:

The notice of charges against Claimant stated:

Developments of the facts and determination of your responsibility, if any, for alleged incidents that occurred on March 29, 2021. While doing a track patrol, you were allegedly traveling East in the Hi -rail truck on the Franklin Branch. You allegedly went through an improperly lined switch causing the Hi -rail truck to derail at Sprague Street Interlocking causing damage to the vehicle.

We find no procedural lapse in this notice. Claimant was not denied an opportunity to defend against the charge simply because it did not mention his tablet. He was not being disciplined for using Trapeze in and of itself; he was disciplined for failure to

note the misaligned switch and warn the driver. This offense is having a lack of vigilance when at restricted speed; the nature of the particular distraction is not the point.

Claimant was supposed to be watching so that the hy-rail could stop before impacting dangerous things such as a misaligned switch. He was not attentive and did not warn Perryman of the switch in question. He was therefore lacked required vigilance. The fact that he was occupied doing some other work-related task does not abrogate his preeminent job duty of being attentive.

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 31st day of October 2023.