

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45164  
Docket No. MW-47628  
24-3-NRAB-00003-220662**

**The Third Division consisted of the regular members and in addition Referee Jeanne M. Vonhof when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Corporation**

**STATEMENT OF CLAIM:**

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

- (1) The discipline (dismissal) imposed upon Mr. J. Gaspari, by letter dated April 21, 2021, for violation of MWOR 8.2 Position of Switches was unwarranted and excessive (System File S-P-2417-F/11-21-0266 BNR.)**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Gaspari: ‘... shall be reinstated to service with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The claimant shall be made whole for all financial losses as a result of the violation, including compensation for:**
  - 1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service);**
  - 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service;**
  - 3) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any**

junior employee for work the claimant could have bid on and performed had the claimant not been removed from service;

- 4) health, dental and vision care insurance premiums, deductibles and co-pays than he would not have paid had he not been unjustly removed from service.

All notations of the dismissal should be removed from all carrier record.”

**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.

At the time of the incident, Claimant was a Foreman on a surfacing crew and had 13 years of seniority with the Carrier, 12 of those as a Foreman. By corrected letter dated March 10, 2021 the Carrier instructed the Claimant to attend an investigation in connection with alleged violations that occurred at or about 1922 hours Pacific Time, on March 3, 2021, at or near Mile Post 89, on the Yakima Valley Subdivision, in Yakima, WA, resulting in a report of his alleged failure to properly complete the position of switch form for Track Warrants 432 - 53 and 432 - 68 while working as a foreman on TSCX-0258. A formal investigation was held on March 25, 2021.

By letter dated April 21, 2021, the Carrier found the Claimant guilty of violating of MWOR 8.2 Position of Switches and assessed immediate dismissal. By letter dated May 5, 2021, the Organization appealed the Carrier's decision. The claim was progressed on the property in the usual manner but the parties were unable to reach agreement and the claim is now properly before this Board.

On March 4, Roadmaster Garcia was the Claimant's immediate supervisor. Garcia conducted an operations test, requesting the Claimant's Position of Switch forms

from the previous day, March 3 when he served as Employee-in-Charge on two authorities, 432-53 and 432-68. Claimant showed Garcia his switch notes on the track authority form. The Claimant said he made additional notes on the cover of a booklet entitled Statement of On-Track Safety and showed them to Garcia.

MOW Operating Rule 8.2 requires that the Position of Switches/Derails must be filled out by the employee-in-charge, and specifically identifies the required information. For purposes of documenting switch positions Garcia identified multiple mistakes in the information the Claimant provided to him, including missing or mistaken information regarding the proper identification of switches and missing or inaccurate information regarding the times when switches were operated or restored. According to Garcia, the information was not recorded accurately or in the proper place and on the proper form.

In the investigation, the Claimant admitted that he made a mistake:

“...on this particular time, I admit I made a mistake. I should've put the time when we whoever opened the switch for us uh when we exited the main to the siding waiting for the two trains, I should've put that down. Uh I only put the time when I operated the switch, closing time, at 18:56. I did miss the time where I was supposed to put the time when the switch was opened for us to uh to to get away from the main line to the siding waiting for the two trains. That part I missed. I realize that now. I did know – I didn't know better at the time but now I realize I missed that time, even though I'm not the one who opened it but still it was under my authority.”

Roadmaster Anderson Garcia testified that the Claimant was present at a Maintenance of Way Operating Rules training session in which the Position of Switch Forms were discussed, a few weeks before this incident.

The Organization's procedural arguments are unconvincing. With respect to not bringing in an employee who had joint authority for some of the instances of missing or inaccurate information, that witness could not have “cleared” the Claimant. The Claimant testified that he had responsibility to record these switch times even when he did not personally throw the switch, when it was done under his authority.

On the basis of all the evidence, the Board finds that the Carrier has met its burden of proof. There is substantial evidence in the testimony and the documents on record that the Claimant violated MOW Rule 8.02.

The safety of Carrier staff and equipment are at risk without attention to detail in recording switching operations. Moreover, in the event of an investigation into an accident in which the Claimant was injured/unavailable, no one could be expected to find, let alone piece together, the information recorded on the cover of the Claimant's safety booklet, or on a glove or a hand where the Claimant testified he and others sometimes record switch times. The Claimant contended that he usually filled out the form correctly "within minutes" of recording it elsewhere but here he was asked for the completed forms a day later, and they were not completed. Even if he had transferred the information in his notes to the form, however, there would still have been inaccuracies in the information recorded.

Therefore, on the evidence submitted, the level of discipline – dismissal – for this safety violation was not unreasonable, arbitrary or capricious. The Claimant had an active Level S from August 2020 for a serious rule violation with a twelve-month review period. As the instant Level S error was within that review period, the Carrier is permitted in accordance with its Employee Performance and Accountability policy to issue a dismissal for a second serious safety violation. That Policy states in pertinent part:

**"If any employee commits an additional Serious Violation within the Review Period, he or she may be subject to dismissal."**

On this basis and understanding that properly documenting switch operations is a crucial safety issue, the Board finds that the Carrier had just cause to issue dismissal.

### **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 22<sup>nd</sup> day of February 2024.**