

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45254
Docket No. MW-47731
24-3-NRAB-00003-230085**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

PARTIES TO DISPUTE: (

(Canadian Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [twenty (20) calendar day suspension served without pay] imposed upon Mr. E. Currier, by letter dated October 8, 2021, for alleged violation of Engineering Safety Rule Book: E-2 Vehicles Used for Company Business and US Rulebook for Engineering Employees: 1.1 Safety was on the basis of unproven charges, was in violation of the Agreement and was arbitrary and excessive (System File D-56-21-390-14/2021-00025766 CMP)**
- (2) As a consequence of the violation referred to Part (1) above, the suspension imposed upon Claimant E. Currier shall now be: * * * set aside, and the Claimant be made whole for all financial and benefit losses incurred as a result of the violation. Such remedy includes:**
 - 1) Straight-time compensation for each regular workday 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 his suspension from service. This amount shall not be reduced by any outside earnings obtained by the Claimant while wrongfully suspended.**
 - 2) Any general lump-sum payment and retroactive and/or periodic general wage increases provided in any applicable agreement that become effective for the period Claimant was out of service.**

- 3) Overtime pay for lost opportunities based on overtime for any position the Claimant could have held during the time he was suspended, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended from service.
- 4) Health & Welfare, dental, vision, supplemental insurance premiums, deductibles, and co-pays that Claimant would not have paid had he not been unjustly suspended from service.
- 5) Any and all other benefits to which entitled, but lost as a result of the Carrier's arbitrary, capricious, and excessive discipline in suspending the Claimant from service beginning October 18, 2021 and continuing through and including November 6, 2021.

In other words, this appeal seeks to make the Claimant whole and expunge his record, the same as if he was never affected by this suspension from service. A simple joint inspection of the Carrier's records can determine the extent of the loss. . . . this discipline shall be set aside, all notations of this discipline be expunged from all Carrier records, including the Claimant's personal record, and the Claimant shall be made whole for all time, compensation, and out-of-pocket expenses incurred for attendance at and travel to and from the investigative hearing, and/or other benefits lost as set forth herein as a result of this assessment of discipline or his attendance at the investigative hearing"

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.

Claimant E. Currier has established and holds seniority within the Carrier's Maintenance of Way Department. During the time period leading up to the Claimant's suspension, the Claimant was assigned to an assistant steel erector foreman position. The Claimant indicated he has held this position since March or April, 2021. The Claimant commenced service with the Carrier on April 14, 2008 having over thirteen (13) years of service and has no record of prior discipline.

Approximately ten (10) days prior to August 24, 2021, the date of the incident that led to the Claimant's twenty (20) calendar day suspension, the Claimant parked a Grapple Truck E20010 into its designated parking stall inside a garage in the Muskego Yard in Milwaukee, Wisconsin about ten (10) times without incident. The truck has a height of thirteen and a half (13 ½) feet and the entrance height of the garage is fourteen (14) feet. At approximately 5:45 A.M. on August 24, 2021, the Claimant stopped the Grapple Truck approximately one hundred (100) yards from the garage entrance, opened the garage door and, in compliance with Carrier rules, the Claimant asserted he performed a 360 degree walk around inspection prior to backing the truck into its parking stall. Based on his asserted walk around inspection, the Claimant related he did not identify any obstructions and proceeded to return to the truck and back it up into the garage and its stall. During the time he performed parking the truck, the Claimant asserted there were no other employees around and therefore, no spotter to watch him driving the truck in reverse. As the Claimant was driving the truck in reverse heading toward entering the garage to get to the parking stall, the garage door apparently malfunctioned by stopping short of completely opening, thereby not reaching its ultimate height of fourteen (14) feet. As a result, the crow's nest atop the thirteen and a half (13 ½) foot high truck struck the bottom of the garage door causing five hundred dollars (\$500.00) damage to the garage door but no damage to the truck and no injury to any employee.

Notwithstanding the Claimant's assertions of how the accident occurred, Carrier performed an investigation at the scene of the accident. According to the record evidence, Carl Rittmeyer, Assistant Chief of Structures, conducted a reenactment on the scene consisting of measuring the garage door, the height and width of the truck, and took photos of both the garage door and the truck. From this information, Carrier concluded the Claimant had violated its rules by not performing a walk around inspection nor did he request a spotter to provide assistance while driving the truck into the garage in reverse. Based on this assessment at the scene of the accident, Carrier convened a Formal Investigatory Hearing held September 30, 2021, notifying the Claimant of the following by initial letter dated August 27, 2021:

The purpose of the investigation and hearing is to develop all facts and circumstances and place your responsibility, if any, in connection with your alleged motor vehicle accident while operating a CP truck on Tuesday, August 24, 2021. This indicates a possible violation of, but is not limited to, the following:

- Engineering Safety Rule Book: E-2 Vehicles Used for Company Business
- US Rulebook for Engineering Employees: GCOR Rule 1.1 Safety
- VP ENGINEERING MESSAGE: Engineering Life Saver Rules Violations – Dated May 17, 2019.

At the Hearing, the Claimant maintained, contrary to Carrier's determination made at the scene of the accident, he performed a walk around prior to backing up the truck into the garage and explained the absence of a spotter was due to the fact that all other employees in and around the area had other job tasks they were performing at the time. The Claimant further explained that the previous ten (10) times he backed into the garage without incident he did not have a spotter at any of these times. The Claimant conceded that after completing his walk around and getting into the truck, the garage door was in the process of opening but it was not fully opened before he commenced backing up the truck which at the start of backing up he was at a distance of approximately one hundred yards away from the garage. Although the record evidence reflected that it was not determined whether the garage door malfunctioned in fully opening to its height of fourteen (14) feet, the Claimant estimated that it takes thirty (30) seconds to drive the truck the one hundred (100) yards distance from where he started to move toward the garage door and that it takes ten (10) to fifteen (15) seconds for the garage door to fully open. Given these estimates of relative time, the Claimant maintained it was reasonable to assume that when he reached the entrance of the garage door, the door would have been fully opened. The Claimant related that he started the garage door opening using the remote opener located inside the truck cab when he began driving the one hundred (100) yard distance toward the garage. The Claimant asserted he did not press the stop button on the remote garage opener to stop it from fully opening but that the garage door stopped opening on its own.

By letter dated October 15, 2021, Carrier notified the Claimant that upon a review of the transcript of the investigation, it determined there was substantial evidence and proof he violated Engineering Safety Rule Book E-2 and US Rulebook for Engineering Employees 1.1 Safety. Accordingly, Carrier apprised the Claimant that

based on the facts and evidence in the Hearing Record, the severity of the incidence and your past discipline history, you are hereby assessed a discipline of twenty (20) calendar days suspension without pay.

Upon our review of the record evidence in its entirety, the Board finds Carrier proved by substantial evidence the Claimant, at best, was negligent in performing the task of parking Carrier's truck as part of his overall duties in the stall located inside the garage. However, we further find that the twenty (20) calendar day suspension was excessive given that there was no evidence to establish the Claimant was the cause of the failure of the garage door from fully opening at the time he approached the door to enter the garage driving the truck in reverse. Accordingly, we rule to reduce the suspension without pay to fifteen (15) days thereby ordering Carrier to pay the Claimant for five (5) days of his suspension.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of March 2024.