

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 45321
Docket No. MW-47886
24-3-NRAB-00003-230330**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

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

PARTIES TO DISPUTE: (

(Lake Superior and Ishpeming Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [fifteen (15) day actual suspension] imposed upon Mr. J. Tyner, by letter dated February 15, 2022, for alleged failure to return the Q Highline Switch (Switch 27) to its required proper position for main line (High Line) operations after he had aligned the switch for movement of the Lorain Crane (Unit 273) onto the Q Siding Track, resulting in the 7 Dock/Hill “assignment running through the misaligned switch on October 25, 2021 was arbitrary, capricious and excessive (System File D-13-22-390-04-L LSI).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant J. Tyner shall have this discipline set aside, have all notations of this discipline expunged from all Carrier records, including the Claimant’s personal record and the Claimant shall be made whole for all losses incurred as a result of this assessment of discipline, as laid out in enumerated detail in the Organization’s April 7, 2022 letter.”**

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.

By notice dated November 3 2021, the Claimant was directed to attend a formal investigation on charges that during an October 25, 2021, incident, the Claimant allegedly violated Carrier rules when he threw a switch for a siding track, but did not throw the switch back to the mainline. The investigation was conducted, after multiple postponements, on February 3, 2022. By letter dated February 15, 2022, the Claimant was informed that as a result of the investigation, he had been found guilty as charged and was being assessed a fifteen-day actual suspension. The Organization filed the instant claim challenging the Carrier's decision to discipline the Claimant. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence proves the Claimant was guilty as charged, because Claimant was afforded a full and fair investigation in accordance with his due process rights, and because the discipline imposed is fully supported by the seriousness of the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to meet its burden of proof, because the discipline imposed was excessive and unwarranted, and because the discipline should be overturned due to the mitigating and extenuating circumstances present in this case.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating GCOR 1.1.1, 8.0, 8.1, 8.2, and 2.7 when he failed to realign Switch 27 for the Highline on October 25, 2021. The record reveals that there is a rule that requires employees to return Switch 27 to the Highline after each use. The Claimant admitted at the hearing that he did not return the switch to its proper position as required by the rules. In the transcript, the Claimant stated that he was aware of the rules and:

“I believe it says when it’s not in use, it should be lined and locked for the High Line with the switch lock.”

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier’s imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Claimant was issued a fifteen-day suspension for his wrongdoing in this case. This incident was his third discipline in a period of twenty months. He had previously received a ten-day deferred suspension which was converted to a ten-day actual suspension by a subsequent disciplinary action. He also received a fifteen-day deferred suspension. Consequently, this Board cannot find that the fifteen-day actual suspension that he was issued for his wrongdoing in this case was unreasonable, arbitrary, or capricious. Therefore, this claim must 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 23rd day of September 2024.