

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45338  
Docket No. SG-47564  
25-3-NRAB-00003-220858**

**The Third Division consisted of the regular members and in addition Referee Michael D. Phillips when award was rendered.**

**(Brotherhood of Railroad Signalmen  
PARTIES TO DISPUTE: (  
(Canadian Pacific Railway**

**STATEMENT OF CLAIM:**

**“Claim on behalf of R.A. Lemmer, for any mention of this matter removed from his personal record; account Carrier violated the current Signalmen's Agreement, particularly Rule 32, when it issued the harsh and excessive discipline of a 20 day actual suspension against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an Investigation held on June 16, 2021. Carrier's File No. 2021-00024233, General Chairman's File No. 2021-00024233, BRS File Case No. 5516, NMB Code No. 203 - Minor Discipline: Safety/Operating Rules.”**

**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.**

**During the period relevant to this case, Claimant Rory Lemmer was employed by the Carrier as an S&C Maintainer. On May 26, 2021, the Claimant performed testing at the crossing at North 115<sup>th</sup> Street on the Watertown Subdivision. During the**

testing, the Claimant removed power from the crossing, but he did not restore power after completing the tests. On May 29, 2021, another maintainer arrived at the crossing to find the gates down, with no lights, as the batteries had been depleted during the period the power was off, and he restored the power.

By letter dated June 4, 2021, the Claimant was notified to attend a hearing to develop the facts and place responsibility, if any, in connection with his alleged involvement with power not being restored after testing at the location identified above. The notice indicated possible violations of US Rulebook for Engineering Employees 1.1 – Safety, 1.1.1 – Maintaining a Safe Course, 1.1.2 – Alert and Attentive, and S&C Requirements – Section 9 – Inspection & Test Intervals Highway Grade Crossing Warning System; 9.2.0 General Rules Part F.

The hearing was held June 16, 2021, after which the Claimant was found to be in violation of the cited rules, and by notice dated July 2, 2021, he was assessed a 20-day suspension, to be served August 1 through 21, 2021.

The Organization submitted the instant claim, which the parties handled on the property according to the applicable agreement. The matter now comes to us for resolution.

The Organization challenges the discipline assessment as being harsh and excessive in the circumstances. It states that the Carrier's decision to assess a delayed suspension shows that the assessment was not needed to correct any deficiencies, and that it was arbitrary for the Carrier to punish the Claimant at a time when it was convenient for the Carrier. It cites prior awards for the principle that discipline should not be punitive or imposed for retribution, and it asserts that it is an abuse of Carrier discretion when discipline is imposed merely to punish, rather than to correct misconduct.

The Organization does not dispute that the Claimant made a mistake, but it challenges the Carrier's message in imposing delayed discipline. It points out that the Carrier charged the Claimant with failing to maintain a safe course, failing to be alert and attentive, and failing to properly test and inspect the highway grade crossing warning system. The Organization questions how the Carrier would leave an employee in his position after it charged him with those violations, and it submits that this proves that the incident in question warranted coaching and counseling rather than an unpaid suspension. It states that the Carrier arbitrarily ignored principles of progressive discipline, and it urges that the claim be sustained.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment, stating that the record contains substantial evidence to support the finding of guilt. It points to the testimony of the Claimant's manager, the testimony of the maintainer who discovered that the power had not been restored, and to the Claimant's own admissions as confirming that the Claimant failed to restore power to the crossing after he completed his tests.

With respect to the discipline assessment, the Carrier states that the Claimant constituted a Major offense under its Hybrid Discipline and Accountability Guidelines, and it submits that the Claimant's failure put other employees and the general public in danger. It asserts that there have been serious incidents when crossings are not properly protected, and that the incident had the potential for a catastrophic event. The Carrier points out that this was the Claimant's second major rule violation in less than a year, and that under the guidelines he could have faced a lengthier suspension or even dismissal. The Carrier states that there was nothing arbitrary or capricious about the assessment here, and it requests that the claim be denied.

We have carefully reviewed the record, including the correspondence, attachments, and citations of authority, and we find that it contains sufficient evidence to support the finding of guilt in this matter. The facts are not in serious dispute, as the evidence establishes that the power was removed when the Claimant performed his tests, and that it was not restored for over three days. We concur with the Carrier that the record confirms that the Claimant's actions violated the cited rules.

Having found that the rule violations were established, we turn to the level of discipline assessed. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. Leaving a crossing unpowered for over three days has the potential for serious consequences, and the suspension assessed is consistent with the Carrier's discipline policy for such an event, especially considering the Claimant's record of having committed another major infraction, which involved a crossing activation failure, less than a year prior to this event. While the Carrier's determination to delay the suspension is somewhat out of the ordinary, we do not find that circumstance alone to invalidate the assessment for the serious infraction. On this record, we cannot find that the Carrier's actions were an abuse of discretion. Therefore, we will not substitute our judgment for the Carrier's now.

**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 31<sup>st</sup> day of October 2024.