

PUBLIC LAW BOARD NO. 6935

| | | |
|---------|---|--|
| PARTIES |) | BROTHERHOOD OF MAINTENANCE OF WAY |
| |) | EMPLOYEES DIVISION - IBT RAIL CONFERENCE |
| |) | |
| TO |) | |
| |) | |
| DISPUTE |) | THE KANSAS CITY SOUTHERN RAILWAY COMPANY |

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed upon Mr. A. Brandon, by letter dated December 20, 2021, for alleged violation of The Kansas City Southern Railway Company’s Maintenance of Way and Signal Department On-Track Safety & Roadway Worker Rules 23.0 – Methods to be Used to Protect Workers Fouling Any Track, OTS Rule 25.0 – Specific On-Track Requirements for Lone Roadway Workers, OTS Rule 25.1 – Rules for Lone Roadway Worker, OTS Rule – 25.1.1 Individual Train Detection may be used to establish on-track safety only, OTS Rule – 25.4 Statement of On-Track Safety and The Kansas City Southern Railway Company’s General Code of Operating Rules 1.6 – Conduct was severe, harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File KCS700SN22D/2021-1276-01 KCS).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Brandon shall now:

‘... be returned to work on his position of laborer, and the claimant shall be made whole for all financial loses (sic) as a result of the violation, including compensation for the straight time for each regular workday lost and holiday pay for each holiday lost. This is to be paid at the rate of position assigned to the claimant at the time of removal of service. This amount is not to be reduced by earnings from alternate employment, obtained by the claimant while wrongfully removed from service. This should also include any general lump sum payment or retroactive general wage increase provided in any applicable agreement that becomes effective while claimant was out of service. Any overtime needs to be included for the lost overtime opportunities for any position the claimant could have held during the time he was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and

performed had he not been removed from service. Any health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service.

It is hereby stated that Mr. Brandon's be fully exonerated, and all notations of the dismissal be removed from all Carrier records.' (Employees' Exhibit 'A-2')."

FINDINGS:

Upon consideration of the entire record and all of the evidence, the Board finds 1) the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; 2) PLB 6935 is duly constituted by Agreement and has jurisdiction over this dispute; and 3) the parties received notice of the hearing.

During Claimant's five (5) years of service with the Carrier leading up to his discipline in December 2021, he established seniority in the Maintenance of Way Department performing laborer duties.

On December 9, 2021 Claimant received notice of a formal investigation to be held on December 14, 2021. The purpose of the investigation was to ascertain facts and determine responsibility, if any, in connection with an incident occurring on December 3, 2021 at approximately 8:45 a.m. involving the Claimant's alleged failure to perform duties in a safe manner by failing to comply with the rules for Lone Roadway Worker before fouling the track.

On December 20, 2021 the Carrier notified Claimant that, after considering the record established during the formal investigation, he was dismissed from service based on the following rules violations:

- The Kansas City Southern Railway Company's Maintenance of Way and Signal Department On-Track Safety & Roadway Worker Rules 23.0 - Methods to be Used to Protect Workers Fouling Any Track; OTS Rule 25.0 - Specific On-Track Requirements for Lone Roadway Workers; OTS Rule 25.1 - Rules for Lone Roadway Worker; OTS Rule 25.1.1 - Individual Train Detection may be used to establish on-track safety only; OTS Rule 25.4 - Statement of On-Track Safety;
- and
- The Kansas City Southern Railway Company's General Code of Operating Rules (GCOR) Rule 1.6 - Conduct.

On February 16, 2022 the Organization filed a claim alleging the investigation was not fair and impartial, the burden of proof was not met by the Carrier to sustain the excessive, harsh and improper discipline.

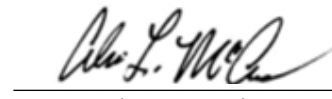
The claim was presented and handled in the usual manner at all stages of appeal up to and including the Carrier's highest designated officer. Following conference held on April 18, 2022 where the parties remained at impasse, this dispute was placed before the Board for final adjudication.

The parties jointly acknowledged during the Board's plenary that they had resolved this matter. Based on this joint declaration that the matter had been resolved, the Board finds there is no dispute to adjudicate, thus, the Board will dismiss the claim.

AWARD: Claim dismissed.

Patrick Halter /s/
Patrick Halter
Chair - Neutral Member


John Schlismann
Employee Member


Al McCombs
Carrier Member

Date: August 7, 2023