

PUBLIC LAW BOARD NO. 5332

**SYSTEM COUNCIL NO. 6
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

and

NORFOLK SOUTHERN RAILWAY COMPANY

Case No. 207

Statement of Claim:

Claim on behalf of Electrician J. Bates in Chicago, Illinois, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Bates is unjustly withheld from Carrier's service. We also request his personal record be cleared of this matter.

Background

In October 2020, Claimant—an employee with ten years' tenure—was employed at the Carrier's Landers Yard in Chicago, Illinois. By letter dated November 13, 2020, Claimant was instructed to report for an investigation regarding his responsibility, if any, regarding his alleged:

Failure to protect a movement resulting in a run-through switch at approximately 11:22 AM on 10/25/20; and/or,

Endangering your safety and the safety of others when you failed to promptly report a run through and/or knowingly directed movement over a run through switch at approximately 11:26 AM on 10/25/20; and/or,

Making false and/or conflicting statements to Senior General Foreman Jim Maravich and/or General Foreman Blatt at approximately 12:00 PM on 10/29/20.

An investigative hearing was held on December 8, 2020. Senior General Foreman Timothy Maravich testified that on October 27, 2020, Assistant Terminal Superintendent Jason Zimmerman asked him to investigate a run-through switch that had been reported on October 26, by job BH45. During his investigation, Maravich reviewed all moves made over a twenty-four-

hour period to determine which consist had run through the west-end cab/runaround switch in question, and when and which employees were involved. Maravich stated that video footage from October 25 showed Claimant sitting in a Carrier truck positioned ahead of a shove of a three-locomotive consist. Claimant directed student machinist Manasseh Champion to shove the consist west on the run-around track over the west-end switch, into the hole stub track. The video showed that Claimant did not check that the switch was properly lined for the shove before instructing Champion to proceed. When Champion proceeded west, the consist ran through the switch.

Claimant then noticed that the bow handle was already lined for the next intended move east into the cab track, and inspected the switch several times over a period of two minutes. He walked back to the truck and directed Champion to proceed east over the run-through switch. Claimant went back to the switch to inspect it again. Claimant was the last person to handle the switch prior to BH45's October 26 report that it was damaged. Photographs of the switch and screen shots from the video showed that the switch points were lined incorrectly, and the bow handle was pointed the wrong direction, at the time of the shove.

Maravich submitted an October 29, 2020 statement made by Claimant reflecting that October 25 had been an ordinary day, with no switch issues. Maravich also submitted an October 29, 2020 statement made by General Foreman Nathan Blatt reflecting that when he and Maravich had questioned Claimant on October 29 about the switch being run through, Claimant stated that he could not recall whom he had worked with on October 25, or what moves the crew had made. The foremen refreshed Claimant's memory by providing a power sheet so he could determine what consist had been worked. After Maravich mentioned that a switch had been run through, Claimant repeatedly denied that he was responsible. Maravich further submitted an

October 31, 2020 statement made by Champion, who reported that he did not recall a run-through switch, and that he made moves only as cleared by Claimant. Maravich testified that run-through switches were not a regular occurrence at Landers Yard.

Testifying on his own behalf, Claimant acknowledged that he was the person in and around the truck shown on the video. He further admitted that he examined the west-end switch as shown. However, according to Claimant, he was not aware of any part of the switch being broken when he left on October 25. October 27 had been a very stressful day and, when Claimant was questioned by Maravich and Blatt on October 29, the events of October 27 blocked his recall of what happened on October 25. He admitted that he was aware that the consist had run through the west-end switch. He asserted that he did not report it because there was no damage. Claimant admitted, however, that he was aware that running through a switch was a rules violation.

Claimant also asserted that Maravich and Blatt only asked him about any broken switch he had encountered on October 25, not a run-through switch, although he subsequently stated that “we all know why switches break.” He testified that he was surprised to learn the switch was broken. According to Claimant, he received two phone calls while he was sitting in the truck and directed Champion to proceed west before Claimant was actually prepared for the move because Claimant was distracted. He stated that he knew there was a surveillance camera. Champion testified that Claimant did not tell him about the west-end switch being run through. He stated that Claimant told him over the radio how many car lengths to proceed and then signaled manually that all was clear for the shove, confirming that he had double-checked the switch.

By letter dated December 17, 2020, Claimant was informed that he had been found guilty of the charges against him, and had been assessed the penalty of dismissal.

Contentions of the Parties

The Carrier contends that substantial evidence of Claimant's misconduct was adduced at hearing. The video presented showed all of Claimant's actions on October 25 in the area of the west-end switch, and that he had not checked the switch prior to directing Champion to proceed over it. Moreover, Claimant then directed Champion to proceed back over the switch knowing that it had been run through. According to the Carrier, running through the switch jeopardized the safety of Claimant himself, as well as others. Furthermore, BH45's report on October 26 that the switch was damaged demonstrated that the switch must have been visibly damaged on October 25. The Carrier argues that Claimant not only failed to check the switch or report the run through, but made self-serving false statements when questioned on October 29. Claimant's work record reflected that, less than one week before the run through, he had engaged in a serious offense for which he had received a fifteen-day deferred suspension and two years' probation. The Carrier submits that in this context, Claimant's dishonesty and disregard of safety rules and procedures warranted his dismissal.

The Organization contends that on October 29, Claimant answered Maravich and Blatt's questions to the best of his recollection, and had simply been confused. The Organization emphasizes that Claimant willingly admitted at hearing that he had directed a movement over the west-end switch while it was improperly lined, because he had been distracted. As he testified, Claimant was unaware that the switch had been damaged. The Organization avers that dismissal was a harsh and excessive penalty for Claimant's unintentional error.

Opinion

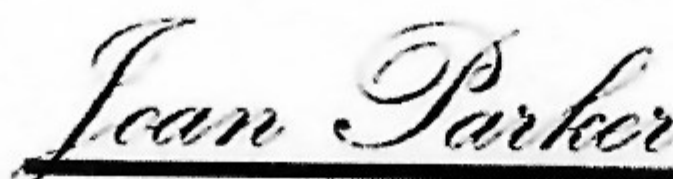
It is undisputed that, on October 25, 2020, as shown on the surveillance video, Claimant failed to inspect the west-end switch prior to directing a shove over it. It also is beyond question

that the switch was improperly lined for the shove, and the shoving movement ran through the switch. While Claimant asserted that he had seen no reason to report the run through because no damage had occurred, the Board finds that Claimant's reasoning cannot excuse his failure to report the run through. Moreover, BH45's October 26 report of damage to the switch is convincing evidence that the switch had been damaged during the October 25 run through. As Maravich credibly testified, running through a switch and failing to report it endangers the current crew, as well as crews subsequently operating over the switch.

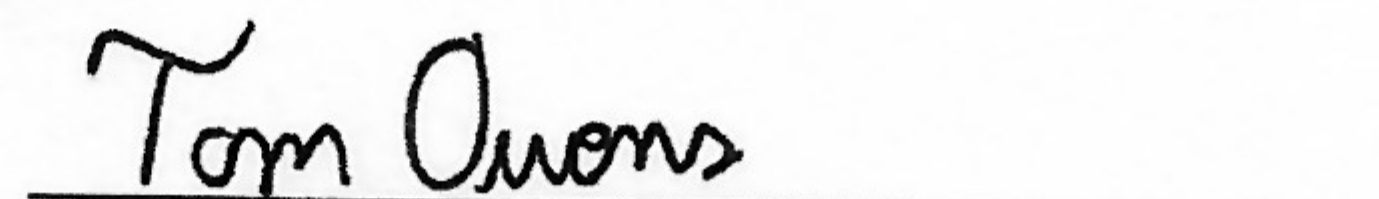
Additionally, the Board finds that Claimant's testimony that he was not questioned about a run-through switch, only a *broken* switch, is without credibility. Claimant himself admitted at hearing that everyone knows what causes a broken switch. The Board is persuaded that Claimant knew or should have known that he was being asked about a run-through switch, and intentionally made false statements when he repeatedly denied knowing of any run through having occurred on October 25. The Board concludes that—especially in the context of Claimant's having been disciplined for a serious offense less than one week prior to the events of October 25—Claimant's failure to comply with important safety rules, and dishonest denial of knowledge that he failed to comply, warranted his dismissal. The claim thus is denied.

Award:

The claim is denied.


JOAN PARKER
Neutral Member


CARRIER MEMBER


ORGANIZATION MEMBER

DATED: 08/02/2022

DATED: 08/01/2022