

PUBLIC LAW BOARD NO. 5332

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

and

NORFOLK SOUTHERN RAILWAY COMPANY

Case No. 211

Statement of Claim:

Claim on behalf of Electrician M.M. Kelly in Birmingham, Alabama, 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 Kelly is unjustly withheld from Carrier's service. We also request his personal record be cleared of this matter.

Background

In November 2020, Claimant Marius Kelly—an employee with tenure from April 14, 2008—was employed at the Carrier's Birmingham Locomotive Shop in Alabama. By letter dated November 13, 2020, he was instructed to report for an investigation:

... to determine your responsibility, if any, with connection to the following:

1. Improper performance of duty in that you failed to timely and accurately work KGR sheets for locomotive NS #6900 resulting in a delay to the work being completed; and/or,

2. Failure to devote yourself exclusively to the Carrier's service in your being away from your assigned work area between 6:30 and 6:45.

These incidents occurred between [3:00 p.m.] and [11:00 p.m.] on November 4th, 2020 while you were assigned as an electrician on 2nd shift....

An investigative hearing was held on February 2, 2021. Senior General Foreman Benjamin Morton-Black presented a timeline of Claimant's November 4, 2020 work, which Morton-Black had constructed from information obtained from General Foreman Gregory Burton (Claimant's immediate supervisor through 6:00 p.m.), and General Foreman Joseph

Leonard (Claimant's immediate supervisor from 6:00 p.m. through the end of Claimant's shift). The constructed timeline, as well as Burton's testimony, reflected that between 3:00 p.m. and 3:10 p.m., Burton conducted the second shift safety meeting, at which he assigned Claimant to work the KGR sheets for NS #6900. Performing a KGR on a locomotive involves performing an EWT [electrical wiring trimmel], KGR [kicking ground relay], and filling out KGR sheets which include the results of megging the unit. Megging entails using a meter (Megohmmeter) to measure resistance from connectors to ground to ensure that insulation has not broken down. Both Morton-Black and Burton testified that megging can be performed from the locomotive cab, and while the steps of the KGR are listed in a particular order on the KGR sheets—a series of three pages entitled the "KGR VMD Quick Guide"—of the multipage Kick & Ground Relay Troubleshooting Guide for each locomotive, the steps are not required to be performed in that order. A single page also must be completed recording the findings of a visual inspection of all six traction motors, which is the only part of the process that must be completed with the locomotive stationed over an open pit.

Burton testified that he told Claimant to first meg the unit, then cut and confirm which traction motors were showing as grounded. According to Morton-Black's timeline as well as Burton's testimony, Claimant reported to Burton at 5:00 p.m. that he was unable to load test the unit and needed to move it over an open pit for his visual inspection of the motors. Burton again instructed Claimant to meg the unit.

Between 5:00 p.m. and 5:20 p.m., NS #6900 was moved to a location over a now available pit. Claimant told Burton that he needed the KGR sheets printed, although the sheets were included in the locomotive packet that already had been given to Claimant at the safety meeting. Burton stated that second shift's first break was from 5:00 p.m. to 5:10 p.m., and lunch

was from 7:00 p.m. to 7:20 p.m. Burton stated that there was no reason for anyone to not be working between 6:30 p.m. and 6:45 p.m. If employees have any issue completing their assigned task, they are required to go to their supervisor, or their gang leader if one is present. According to Burton, Claimant did not come to tell him that he was having any issues or needed any help until immediately before the 5:00 p.m. break.

Morton-Black's timeline as well as Leonard's testimony reflect that during Leonard's turnover with Burton between 6:00 p.m. and 6:30 p.m., Burton told Leonard that Claimant had been assigned to work a KGR on #6900, but that no one had received any update from Claimant regarding the work. Leonard went to look for Claimant at 6:30 p.m., but Claimant was not at his assigned work area. Leonard stated that he also did not see any tools, open cabinets, the megger, the packet for the locomotive, or the KGR sheets inside the cab or anywhere around the unit to indicate that any work had been performed.

At 6:45 p.m., he found Claimant in the supervisor's office. Leonard asked Claimant to show him what he had found on #6900. Claimant told Leonard that all he had done so far was to visually inspect the motors, and that the brushes and brush holder on the #4 traction motor were flashed over. Claimant requested to replace the brushes on #4 prior to megging the unit because the brush leads were burnt off. Leonard told Claimant that they needed to get the unit megged.

According to Leonard, Claimant nevertheless got the tools to replace the brushes after lunch. At 7:40 p.m., Claimant returned to get the megger. At 9:20 p.m., Claimant showed Leonard the completed KGR sheets. Leonard stated that between 7:40 p.m. to 9:20 p.m.—an hour and forty minutes—Claimant could only have been megging the unit.

Testifying on his own behalf, Claimant stated that after he was assigned to work the KGR sheets for #6900, he walked around the engine to visually inspect it. He then went into the cab,

started the engine, reviewed the fault log, and attempted to duplicate the problem. According to Claimant, the engine loaded fine until he tried to stall test it, when it kicked a fault for traction motor #4. He got someone to assist him to move the locomotive and locate it over an open pit that had become available. He performed a visual inspection that showed the #4 motor was flashed over. He went to the office to report the issue to Leonard, who asked him “kind of frantically” to show him what Claimant had completed so far. Claimant showed him the flashed over motor and that the brushes and brush holders had melted.

Claimant acknowledged that after lunch, Leonard told him that Morton-Black had said to not worry about the brushes, and to just meg the engine. Claimant megged the engine, and all the readings were good. Leonard came to the cab for an update, and Claimant showed him the readings from the motors. Claimant subsequently acknowledged that he could have megged the unit at any time during his shift. He stated that he did not recall Burton telling him to meg the unit when they spoke before the 5:00 p.m. break. He acknowledged that two hours typically would be sufficient to complete a KGR. He stated that he waited for a shop pit to open for an hour and fifteen minutes. When pressed to explain what he did during that time, however, Claimant admitted: “I could have grabbed a megger....” (Car. Ex. A at 83.)

By letter dated March 1, 2021, Claimant was informed that he had been found guilty of failing to timely and accurately work the KGR sheets for NS #6900, resulting in a delay, and was dismissed.

Contentions of the Parties

The Carrier contends that the evidence adduced at hearing demonstrated Claimant’s guilt of the charges against him. As General Foreman Burton credibly testified, he instructed Claimant to meg locomotive #6900 *first*, a common practice when a pit is not immediately available to

complete internal inspection of the unit. Even after being reminded by Burton at 5:00 p.m., and told a third time by General Foreman Leonard at 7:20 p.m. to meg the unit, Claimant failed to complete the task for an additional hour and forty minutes. Delays are a serious matter in an industry dependent on meeting customer expectations for timely delivery of goods. The delay Claimant caused on November 4 by failing to properly perform his duties was unacceptable. Moreover, the November 4, 2020 incident was Claimant's third serious violation in just one year. The Carrier submits that dismissal thus was warranted.

The Organization argues that Claimant was instructed to work the Carrier's KGR worksheets for #6900 and complied with those instructions. The worksheets do not list any designated timeframe for completing each step. According to the Organization, Claimant's failure to perform the meg testing first was a harmless error, because megging the unit did not reveal any trouble with the #4 traction motor. Rather, Claimant discovered it when he visually inspected the motor. It is the Organization's additional contention that Claimant's dismissal was unduly harsh and excessive, and not in line with progressive discipline.

Opinion

It is undisputed that at the start of his shift at 3:00 p.m., Claimant was assigned to work the KGR sheets for NS #6900. General Foreman Burton credibly and persuasively testified that he told Claimant to *meg the unit first*, which Claimant admitted could have been done without waiting to move the unit over a pit. At 5:00 p.m., however, Claimant still had not megged the unit. Burton instructed him again to do so. When General Foreman Leonard took over from Burton as supervisor, he looked for Claimant at 6:30 p.m. to get an update on Claimant's work on #6900. When Leonard found Claimant at 6:45 p.m., Claimant still had not megged the unit. Only after the shift lunch break, at 7:40 p.m., did Claimant finally get together what he needed to

meg the unit.

Claimant ignored every opportunity to meg the unit between 3:10 p.m. and 7:40 p.m. Claimant's effort to explain what he had done prior to 7:40 p.m. was confusing and unpersuasive. Moreover, once Claimant began to properly process the unit, it took him an hour and forty minutes to complete it. The Board is convinced by the Record evidence that during the bulk of Claimant's shift, he was not performing any significant work. The Carrier is entitled to expect employees to complete assigned tasks in an efficient manner. Moreover, the November 4, 2020 incident constituted Claimant's third serious violation in a year. The Board is satisfied that Claimant's conduct on November 4 justified his dismissal. The claim is denied.

Award:

The claim is denied.

Joan Parker
JOAN PARKER
Neutral Member

Jan Cest
CARRIER MEMBER

DATED: 08/02/2022

Tom Owens
ORGANIZATION MEMBER

DATED: 08/01/2022