

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332**

Parties to Dispute:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

-and-

**NORFOLK SOUTHERN RAILWAY
COMPANY**

AWARD

Case No. 155

Claimant M. R. Gipson

STATEMENT OF CLAIM:

“Claim on behalf of Electrician M. R. Gipson in Decatur, 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 Gipson is unjustly withheld from Carrier’s service. We also request his personal record be cleared of the matter.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

On February 28, 2014, Claimant Gipson was directed to report to a formal investigation into Carrier’s charges that he had made false statements with regard to events occurring on March 16, 2016, while he as working as an Electrician on the third shift at the at the Decatur Diesel Inspection Terminal, Decatur, IL. Following review of the record developed at that hearing, by letter dated May 25, 2016, Manager of Roanoke Locomotive Shop Ryan Stege advised Claimant that he was being dismissed from service. Carrier’s action was timely appealed by the Organization on July 5, 2016, and when the dispute remained unresolved in claim handling on the property it was advanced to this Board for final and binding determination.

The record indicates that Mr. Gipson had initially hired on at NS July 19, 2010 as a Student Carman in Decatur, IL, transferring shortly thereafter to a Student Electrician position and completing his training as Electrician approximately two years later. The background leading to Grievant's dismissal are straightforward and largely undisputed. On March 5, 2016, upon being notified by Company Machinist Smothers that the 03 Track switch was difficult to throw, Mechanical Supervisor B. Huffman requested inspection of the track by the Track Department. Examination revealed that the switch had been run through and damaged. Review of the recent moves over that segment of track established that Claimant and his fellow crew members, Student Electrician Rapp and Student Machinist Wilbur, had operated the last move of equipment over the switch prior to Huffman's receipt of the damage report from Smothers.

On March 16, 2016, Senior General Foreman C. Henson questioned Claimant with respect to the run through. Asked directly if he knew anything about the damage, Claimant denied that he had been responsible. He further disclaimed any attempt to make repairs to the track thereafter. Two days later, however, on the evening of March 18, 2016, he called Charging Officer Clayton Henson and openly admitted that he had accidentally run through the 03 Track switch and then tried unsuccessfully to realign the switch points with the weight of his locomotive. Claimant also willingly confirmed such in a written statement.

Carrier takes the position that Claimant's failure to be open and honest in his initial narrative presents a major rule violation warranting discharge. In support it offers a substantial volume of arbitral precedent on the point.

The Organization maintains that several procedural defects in claim handling should be viewed as fatal to the Carrier's case. Specifically, it points to Carrier's failure to conclusively rule on the objections raised by Claimant's representative with respect to the introduction of written statements from Student Electricians Rapp and Wheeler and Student Machinists Wood and Griffin. Rapp and Wilbur had been previously dismissed from service. The Organization asserts that statements from each were read into the record without affording it an opportunity to cross examine the authors of the written statements. Addressing the merits, it argues that the Claimant's actions, while improper, did not warrant such severe discipline under the circumstances presented. In that regard, it

stresses the uncontradicted testimony of the Grievant, who represented to Henson both on March 18 and in his testimony here that his initial denials to management were the product of his desire to protect his two student co-workers, neither of whom would have had access to the grievance process in the event they were disciplined.

Carrier has every right to expect that its employees will be truthful at all times, and particularly in connection with its attempts to run to ground the causes of accidents, regardless of whether injuries or property damages are incurred. Further, in the context of this dispute there is no point in trying to put earrings on the situation: Claimant was not forthright at the onset in accepting responsibility for the damaged switch. Claimant's failure to be honest with the Carrier on a work-related matter is a valid cause for grave concern. However, after providing a dishonest response to his Senior General Foreman's inquiries, he reversed field, owned up to his role in the mishap shortly thereafter, and is unequivocal on this record in acknowledging that he ran the switch and attempted to repair the problem. The rationale he has consistently articulated for not immediately owning up has been consistent—he was motivated by a desire to protect his two fellow crewmembers.

While the Board finds the Organization's procedural arguments generally unpersuasive, the combined effect of Carrier's judgment in electing to sponsor hearsay statements in lieu of live witnesses subject to cross-examination and credibility testing and then withholding rulings on objections to such statements in some instances fell short of ideal handling. Claimant was contractually entitled to a full and fair investigation. When those aspects of the dispute are considered in context with the laudable but misguided motives of the Claimant in not immediately owning up and his past commendable service record, the Board is inclined to concur with the Organization's contention that dismissal was an excessive response.


Claimant's service record since 2010 was spotless. The Board does not minimize the seriousness of the triggering incident, but the record reflects no bodily injury to himself or others; no significant property damage; minimal interference with operations; and benign motivation for Claimant's initial delay in making full disclosure. His testimony before the Board projected both genuine remorse and a clear indication of lesson learned. In

consequence, while Carrier has amply established a basis for discipline, and while the Board is normally loathe to intrude on leniency judgments, given the circumstances, including that the primary evidence against the Claimant was his own admission made when he determined to contact the Senior General Foreman and set the record straight, we conclude that the resultant time out of service has adequately served Carrier's purposes.

On that basis, we conclude the claim should be partially sustained. Claimant shall be restored to service with seniority intact but without backpay or benefits, with time out of service treated as time spent on disciplinary suspension.

A W A R D

The Claim is partially sustained in accordance with the Findings.


James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Decker
Carrier Member

Dated: November 21, 2017