

**PUBLIC LAW BOARD NO. 7425**

**PARTIES ) SMART - TRANSPORTATION DIVISION  
TO )  
DISPUTE ) BNSF RAILWAY COMPANY**

**STATEMENT OF CLAIM:**

**Claim of Memphis, TN Yard Foreman D L. Coleman for removal of Level S Thirty (30) Day Record Suspension and Three (3) Year Review Period from his record and pay for all time lost as a result of an investigation held on March 18, 2015. (Organization File No. D1420-078-16A; Carrier File No. 55-16-0045D)**

**FINDINGS:**

**The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon. The Claimant was present for and provided opportunity to participate in the Board's hearing of this claim.**

**On March 2, 2015 the Claimant was assigned to the Foreman position on a remote control operation (RCO) yard assignment. Among the Claimant's and his Helper's assigned duties was that of bringing two locomotives in Memphis Yard from what is known as the "blow up track" to the "hump lead track" through crossover switches. After being informed by radio from his Helper that two switches to be traversed were lined for their RCO movement, the Claimant, who was handling the RCO box, proceeded to move the two locomotives through the first of the two crossover switches. As the move was approaching the second, or hump lead crossover switch, the Helper on a different yard job lined this switch against the intended movement of the Claimant's two locomotives. The Claimant, not observing that the switch was now lined against his move, directed the light engine movement through the switch, resulting in damage to the switch.**

**Following an investigation into the incident the Claimant was notified by Carrier letter of March 26, 2015 that it had determined him to be responsible for a failure to protect the point of a shoving movement in which he was engaged and a failure to inspect and ensure that a switch was properly lined for his intended movement before proceeding through it, resulting in what is known as a run through switch violation.**

**Notwithstanding culpability of the Helper who had lined the switch against the Claimant's move, and who was disciplined for his part in the incident, it remained**

the responsibility of the Claimant to have been visually observant to ensure the switch was properly lined for his intended movement through that switch. As the Carrier submits in making reference to an excerpt from the findings in Award No. 9 of PLB 3321, Arbitrator A. Thomas VanWart:

The negligence of one employee, however innocent and unwitting it may have been, does not afford an excuse for another employee's failure to comply with responsibilities that are charged to him.

Further, as was stated in the findings of Award No. 30 of PLB 7601 by the chair and neutral member of this Board:

In the opinion of the Board, although it is evident that the Engineer had some responsibility for the incident, this fact alone does not mitigate the responsibility of Claimant as Foreman to have properly protected the shoving move in full observance of the cited GCOR rules.


Lastly, as concerns procedural argument offered by the Organization. In study of the record we find no evidence of prejudgment or reason to hold that the Claimant was denied his due process rights because no alleged GCOR rule violations were listed in the notice of investigation. The hearing commenced at 8:06 a.m. and concluded at 10:02 a.m., a two-hour hearing that provided for the examination and cross examination of witnesses and the presentation of the Claimant's defense against the charge of record. Although we agree with the Organization that the Helper of the other assignment who had lined the switch against the Claimant's move should have been summoned as a witness, we do not find this particular instance sufficient reason to hold that the Claimant was denied a fair hearing. A written statement from this individual was placed in evidence, and, as the Carrier states, that Helper's actions in no way absolved the Claimant from his own inaction.

The record showing the Carrier to have met a necessary burden of proof to hold that discipline as assessed the Claimant was warranted, the claim will be denied.

Award: Claim Denied.

  
Robert E. Peterson  
Chair & Neutral Member

  
Melissa A. Beasley-Coke  
Carrier Member

  
J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: March 27, 2018