

**PUBLIC LAW BOARD NO. 7425**

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

**STATEMENT OF CLAIM:**

**Claim of Memphis, Tennessee Yard Helper Mohammed Swalis for reinstatement to service with seniority rights unimpaired, removal of censure from his personal record and pay for all time lost including but not limited to the following: payment of vacation allowance, health and welfare costs, reimbursement of all expenses related to the pursuit of alternative employment, reimbursement for any damages incurred as the result of discharge from service including proceeds on any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on July 2, 20, 2015. (Organization File No. D1420-147-16A; Carrier File No. 55-16-0061D)**

**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.**

**On June 17, 2015 the Claimant, who was working as the Helper, and the Foreman of his yard assignment, were jointly notified that an investigation would be held on June 26, 2015 for the purpose of ascertaining the facts and determining their responsibility, if any, in connection with an alleged failure to properly protect a switching movement through the Memphis Yard 45 switch at approximately 1755 hours on June 16, 2015 that was not properly lined for their intended movement. After a mutually agreed upon postponement, the investigation was held on July 2, 2015.**

**Following the investigation, the Claimant was notified by letter of July 10, 2015 that the Carrier had determined through testimony and exhibits brought forth at the investigation that he was responsible for a failure to protect the aforementioned train movement in violation of GCOR 1.1.2, Alert and Attentive, GCOR 6.5.1, Remote Control Movements, GCOR 6.28, Movement on Other than Main Track, GCOR 8.2, Position of Switches, and MSR 13.7.1, Checking for Damage and Obstructions. The notice stated that the Claimant was dismissed from service effective that date, July 10, 2015, and that in assessing discipline consideration was given to his discipline record.**

The facts of record are not in dispute. The Claimant was on the lead engine and in control of the Remote Control Operation (RCO) job of building a train for departure. The Foreman was in the bowl giving the Claimant car counts to go back to the bowl to get a cut of cars. While the Claimant was pulling forward he observed a switch that was not lined for his intended movement and stopped short of the switch. The Foreman, located at the other end of the cut, indicated that he needed the Claimant to pull the cut forward two car lengths in order to clear a switch that he (the Foreman) was to line. The Claimant, apparently forgetting that the switch ahead was lined against his movement, proceed forward before realizing his mistake, with the leading two axles of the engine traversing the improperly lined switch. After stopping the movement, the Claimant immediately reported the incident to the Yardmaster and supervisory officials. It is noted, however, that the switching movement did not "run through" the switch; two front axles of the lead engine went into the switch. There was no reported damage to the switch.

The Organization says there is no question that the Claimant was honest and forthright from the moment the incident occurred through the conclusion of the investigation process. Further, the Organization says that the Claimant's closing statement at the July 2, 2015 investigation demonstrates his commitment to improving his skill set and working in a safe and efficient manner.

In this latter respect, the Claimant presented into the record a personal type-written statement addressed to the BNSF Management that, among things, states:

I am writing to you about your expressed concern(s) regarding the incident that took place on June 16, 2015. I appreciate your decision to hear my reasons for why I should remain employed at BNSF. I am treating this incident, and the previous one as a great learning experience. I take responsibility for my actions in the incident, but felt that I did everything that I was supposed to prevent a prolonged negative impact on the company.

\* \* \* \* \*

According to the BNSF handbook, I was required to be honest and report the details of the incident immediately, which I did. I would be so grateful if you weighed my honesty and prompt reporting efforts in your decision to continue our work relationship. . . . If I am given the opportunity, I will show you immediate improvement in performance to my position.


Words cannot express the regret I feel for what has happened. It was preventable, human error. I accept that I must be reprimanded for

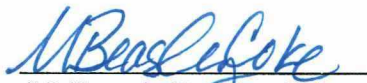
my error, but hope that you would allow me to atone for my mistake with an arrangement that will allow me to renew your confidence in me. I am willing to do whatever it takes to hold on to this opportunity. It is one that I have long dreamed of. I appreciate your consideration.


There is no question that the Claimant committed a serious violation of GCOR and safety rules in a failure to remain alert and attentive to his assigned duties, and therefore deserving of stern discipline. We do not believe, however, that this incident and the Claimant's record call for imposition of the ultimate penalty of dismissal from service. We find more appropriate discipline to be the amount of time that the Claimant will have been out of service, with no pay for time lost, to the date of implementation of the Board's Award. Accordingly, we will direct that discipline be modified to a Level S Suspension with a Three Year Review Period to the extent as stated, with the Claimant's return to service being with seniority and other benefits unimpaired, and subject to the Claimant passing all regular return to service examinations.

**Award:**

**Claim disposed of asset forth in the above Findings.**

  
Robert E. Peterson  
Chair & Neutral Member

  
Melissa A. Beasley-Coke  
Carrier Member

  
J. Michael LaPresta  
Organization Member

Fort Worth, TX  
Dated: March 27, 2018