

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHEROOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 120  
CASE NO. 120  
FILE: 2019-0911

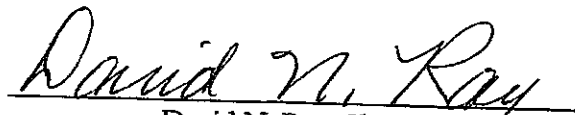
STATEMENT OF CLAIM: Claim of KCS Engineer Reginald Owens for the unwarranted discipline of letter of 1 point under the Availability Policy Train, Engine & Yard Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's General Code of Operating Rules 1.15 - Duty - Reporting or Absence and The Kansas City Southern Railway Company's General Code of Operating Rules 1.16 - Subject to Call.


FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed on October 16, 2000, and was subsequently promoted to engineer. On December 29, 2019, Claimant was called as engineer on the I-DAAT-29, on duty at 7:20 a.m. in Shreveport, Louisiana. There was no answer. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed one point.

The evidence developed in the hearing confirms that Claimant violated Carrier's rules. The record indicates Claimant was called multiple times between 5:23 a.m. and 5:48 a.m. Claimant stated he never received a call and provided evidence there was technical problem with the phone service. Claimant stated he never missed a call in twenty years and voluntarily added an additional number as suggested by his supervisor. After a thorough review of the entire record, the Board will remove the discipline from Claimant's record, but deny any pay for time lost.

AWARD: Claim sustained, in part, in accordance with Findings.

  
\_\_\_\_\_  
David N. Ray, Chairman

  
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Jacob McCahill, Carrier Member

  
\_\_\_\_\_  
J. Alan Holdcraft, Employee Member

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 121  
CASE NO. 121  
FILE: 2020-0142

STATEMENT OF CLAIM: Claim of KCS Engineer Stacy Bayless for the unwarranted discipline of 60 days suspension of which 30 was actual suspension from service (March 30, 2020, through April 28, 2020) and thirty (30) days record suspension added to his personnel file. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's General Air Brake Systems and Train Handling Rules and Instructions 101.14 - Securing Equipment.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

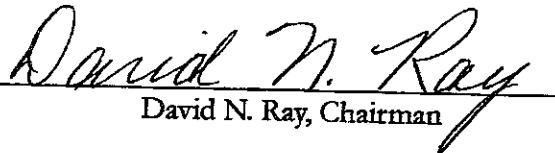
Claimant was employed on July 27, 1994, and was subsequently promoted to engineer. On February 21, 2020, Claimant was the engineer on the M-VNKC-20 out of Kansas City, Missouri. A Carrier officer was performing rules checks and found Claimant's locomotive had been left near Milepost 26.5 at IGF, an intermodal yard, with the reverser centered in the control stand. As a result, a hearing was held and based on the evidence, Claimant was assessed a sixty day suspension (thirty actual and thirty record).

Substantial evidence, including Claimant's testimony, support the charges. The Organization argues the time limits were violated. Carrier provided evidence they mailed the notice within the time limits and it was not accepted by Claimant and returned. The Organization states that Claimant made a minor error when he forgot to remove the reverser and the penalty was harsh and unwarranted. The discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

AWARD: Claim denied.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

PUBLIC LAW BOARD 7239

PARTIES BROTHERTHOOD OF LOCOMOTIVE  
TO ENGINEERS AND TRAINMEN  
DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 122  
CASE NO. 122  
FILE: 2020-0149

STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to brakeman John Perdun, May 22, 2020. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for time lost, restoration of Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

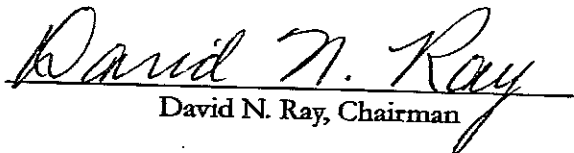
Claimant was employed for six and a half years. On February 27, 2020, Claimant was the brakeman on the LRH101-27, a local out of Roodhouse, Illinois, working an industry at Milepost 28.3 on the Godfrey Subdivision. The crew completed their work and released the Track Authority protecting the switch to the industry at 11:15 a.m. Later the same date, the OVLES crew discovered the Main line switch at Godfrey, Illinois was not properly lined for their movement and they lined the switch for the main track at 10:42 p.m. As a result, a hearing was scheduled and based on the evidence, Claimant was dismissed.

The evidence developed in the hearing confirms that Claimant violated Carrier's rules. The Organization argues Claimant was not responsible and the charges were not proven. The record indicates another crew discovered an open switch that was last used by Claimant's crew. Claimant stated while making a facing point movement at the industry, he used a hasp rather than a lock in violation of Carrier rules. In addition, the conductor testified before departing, he lined and locked the switch for the main. Claimant testified he lined the derail and his conductor handled the main line switch. The conductor advised when he released his Track Authority, he considered that as being a proper job briefing indicating the switches were lined and the crew was clear to proceed. Carrier states this was not a proper job briefing. The evidence indicates there was no job briefing with all crew members prior to releasing the Track Authority as required. Carrier provided WIU data log evidence indicating the switch was not lined back for the main line when the crew departed the industry. The instant violation is not a dismissal offense, but the major rules infraction together with Claimant's discipline record subjected Claimant to dismissal under Carrier's discipline policy. Under the circumstances, the Board will return Claimant to service, but without pay for time lost.

AWARD: Claim sustained, in part, in accordance with Findings.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on March 30, 2021.

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE  
ENGINEERS AND TRAINMEN  
TO  
DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 123  
CASE NO. 123  
FILE: 2020-0147

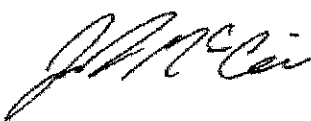
STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Mark Davis, May 22, 2020. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for time lost, restoration of Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

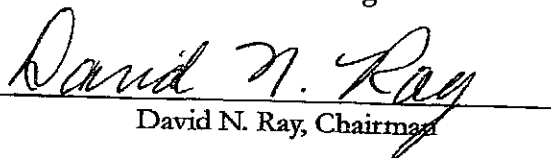
Claimant was employed for over twenty nine years. On February 27, 2020, Claimant was engineer on the LRH101-27, a local out of Roodhouse, Illinois, working an industry at Milepost 28.3 on the Godfrey Subdivision. The crew completed their work and released the Track Authority protecting the switch to the industry at 11:15 a.m. Later the same date, the OVLES crew discovered the Main line switch at Godfrey, Illinois was not properly lined for their movement and they lined the switch for the main track at 10:42 p.m. As a result, a hearing was scheduled and based on the evidence, Claimant was dismissed.

The evidence developed in the hearing confirms that Claimant violated Carrier's rules. The Organization argues Claimant was not responsible and the charges were not proven. The record indicates another crew discovered an open switch that was last used by Claimant's crew. The conductor testified before departing, he lined and locked the switch for the main. Claimant's brakeman testified he lined the derail and the conductor handled the main line switch. The conductor advised when he released his Track Authority, he considered that as being a proper job briefing indicating the switches were lined and the crew was clear to proceed. In addition, the Track Authority did not contain Claimant's initials in violation of Carrier rules. Carrier states this was not a proper job briefing. The evidence indicates there was no job briefing with all crew members prior to releasing the Track Authority as required. Carrier provided WIU data log evidence indicating the switch was not lined back for the main line when the crew departed the industry. The instant violation is not a dismissal offense, but the major rules infraction together with Claimant's discipline record subjected Claimant to dismissal under Carrier's discipline policy. Under the circumstances, the Board will return Claimant to service, but without pay for time lost.

AWARD: Claim sustained, in part, in accordance with Findings.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on March 30, 2021.

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 124  
CASE NO. 124  
FILE: 2020-0375

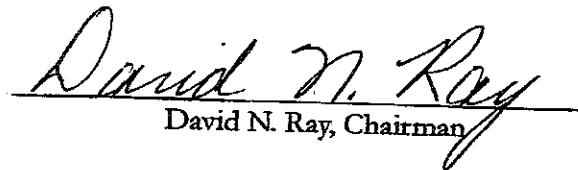
STATEMENT OF CLAIM: Claim of KCS Engineer William Fortenberry for the unwarranted discipline of 30 days suspension from service of which 5 actually served May 29, 2020 through July 2, 2020 and 25 days record suspension. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's Company's General Code of Operating Rules 8.2 - Position of Switches.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed for over 31 years. On May 26, 2020, Claimant was the engineer on the R-GP302-26 working in Gulfport, Mississippi. A Carrier officer reviewed video data of the crew and noticed the Claimant fouling an adjacent track before switches lined against his movement were properly lined. As a result, a hearing was held and based on the evidence, Claimant was assessed a thirty day suspension, of which five days were served.

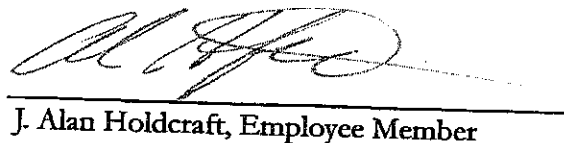
Substantial evidence, including Claimant's testimony, support the charges. The Organization argues in view of Claimant's record and tenure, the discipline was excessive. Claimant advised he believed he was doing the safe thing in view the ground conditions and a previous snake sighting. The discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

AWARD: Claim denied.

  
David N. Ray, Chairman



Jacob McCahill, Carrier Member

  
J. Alan Holdcraft, Employee Member

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHEROOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 125  
CASE NO. 125  
FILE: 2020-0378

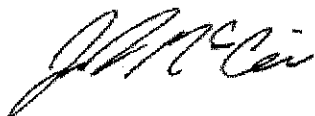
STATEMENT OF CLAIM: Claim of KCS Engineer William Fortenberry for the unwarranted discipline of 60 days suspension from service of which 30 actually served May 29, 2020 through June 2, 2020 and 25 days record suspension. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's Air Brake Systems and Train Handling Rules and Instructions 101.13 - Transfer Train Brake Test and ABTH Rule 109.1 - Engineer Responsibilities and Certification; Engineer and Conductor Responsibilities.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

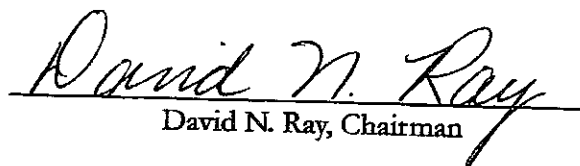
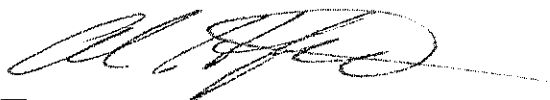
Claimant was employed for over 31 years. On May 28, 2020, Claimant was the engineer on the R-GP302-28 working in Gulfport, Mississippi. A Carrier officer noticed the Claimant did not perform a proper transfer brake test. As a result, a hearing was held and based on the evidence, Claimant was assessed a sixty day suspension (thirty actual and thirty record).

Substantial evidence support the charges. The Organization argues the charges were not proven. Claimant stated he sets the brakes when advised to do so. Claimant's conductor advised he was unaware of the requirement to use an air gauge to check air pressure on a transfer move. Claimant advised he always makes at least a fifteen pound brake reduction, but the download indicates Claimant made an eight pound brake reduction. The discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

AWARD: Claim denied.



Jacob McCahill, Carrier Member

  
David N. Ray, Chairman

J. Alan Holdcraft, Employee Member

PUBLIC LAW BOARD 7239

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 126  
CASE NO. 126  
FILE: 2020-0410

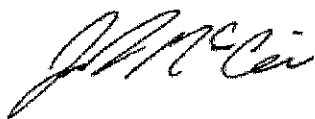
STATEMENT OF CLAIM: Claim of KCS Engineer Joe Orr for the unwarranted discipline of 30 days suspension of which 5 day actual suspension from service (June 7, 2020 through June 11, 2020 and 25 days record suspension) assessed to Engineer Orr. This claim is for all compensation lost during suspension and removal of all notations from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation restoring him as an active Locomotive Engineer for The Kansas City Southern Railway Company. He is charged with violating The Kansas City Southern Railway Company's General Code of Operating Rules 5.4.7 - Display of Red Flag and The Kansas City Southern Railway Company's Air Brake Systems and Train Handling Rules and Instructions 109.1 - Engineer Responsibilities and Certification, Engineer and Conductor Responsibilities.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

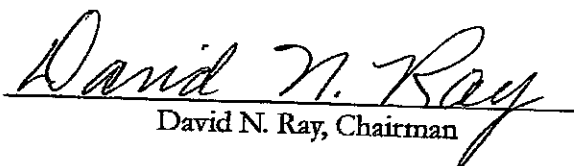
Claimant was employed for over 23 years. On June 6, 2020, Claimant was the engineer on the M-SHAR-05 working out of Artesia, Mississippi. A Carrier officer was doing an efficiency test at East Rankin. Claimant had a red signal at East Rankin, called the dispatcher and received permission to proceed to the next signal. A red flag was placed just past a road crossing at milepost 75.4. Claimant's crew went by the flag by a few feet. As a result, a hearing was held and based on the evidence, Claimant was assessed a thirty day suspension, of which five days were served.

Substantial evidence support the charges. The Organization argues the test was unfair as Claimant was focused on train handling, blowing the whistle and watching for traffic. They also state it was not proven that Claimant's engine passed the red flag. Claimant advised he saw the red flag and stopped as quickly as he could. After a review of all of the testimony, it is clear Claimant's train was not traveling at restricted speed and passed a red flag by a short distance in violation of Carrier rules. The discipline was issued under Carrier's discipline Policy Matrix. The Board finds no basis to overturn the Carrier's decision.

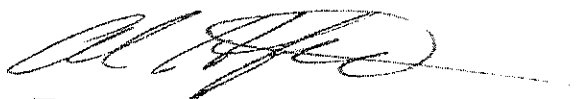
AWARD: Claim denied.



Jacob McCahill, Carrier Member



David N. Ray, Chairman



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on March 30, 2021.

## PUBLIC LAW BOARD 7239

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
TO  
DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 127  
CASE NO. 127  
FILE: 2020-0460

STATEMENT OF CLAIM: Appealing the Carrier's unwarranted dismissal from service assessed to Engineer Joel Sugg on July 24, 2020. Claiming payment for all time lost, immediate reinstatement to service, and all notations removed from his personal work record resulting from his dismissal from service. This claim shall include pay for time lost, restoration of Railroad Retirement Credits, including all cost for Health and Welfare benefits, and loss of such benefits during the time of dismissal. This claim also includes the Claimant's return to service, with seniority rights unimpaired, and restoration of all vacation entitlements, personal leave days, and all other Employment related benefits, which he would have received while in active service.

FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed for over twenty nine years and was working as an engineer out of Jackson, Mississippi. On June 29, 2020, Carrier received two ethics complaints and one crew member complaint regarding a Facebook post made by Claimant. As a result, a hearing was scheduled and based on the evidence, Claimant was dismissed.

Carrier's Human Resources Department received a report from an employee regarding a Facebook post from Claimant's account stating "And BLM can kiss my A-S-S...does that cover everyone." It adds "#BLM #AllLivesMatter#Trump2020 #WalkAway#wheresmyprivilege.". It also had a picture that says "Just saving time. Going to offend everybody all at once.". The post also contained a response from a Facebook friend that says, "If this ain't racist I don't know what is.". A couple hours later Carrier received a second complaint and the next day a third complaint. In the second complaint, the employee advised Claimant had made a previous derogatory statement regarding Black Lives Matter but advised in a follow up call from Human Resources that they were surprised, did not know Claimant felt that way and was offended. In the third complaint, the follow up call indicated shock and a lot of people being upset. The employees who made the complaints had their identities protected and could not be questioned on seniority standing or possible motivations for making the complaint. It is also unclear whether the post or the friend's response to the post caused the complaint to be filed or the uneasiness.

Claimant testified the post was not directed at the company or any employee. Claimant stated he could not believe everyone is so easily offended and advised the Facebook friend who made the response that his post was merely a sarcastic attempt to illustrate how people are so easily offended. Claimant's responding friend was not permitted to testify and could not be questioned on providing the post to Claimant's fellow

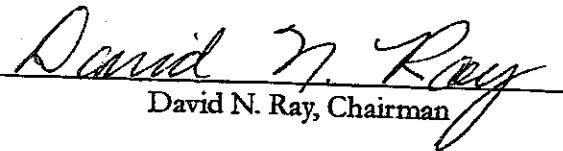


employees and what his motivation was for forwarding the post. Claimant advised and his record confirms he has had no employee issues in his almost thirty years of service. Claimant stated all lives matter, they are created equal in God's eyes and they should have an equal opportunity to succeed in life. Claimant stated he was not a racist but disagreed with the BLM views. Claimant stated he believed the group was a political organization funded by a liberal activist seeking to change life as Claimant knows it through methods that encourage violence and the destruction of property.

The Organization argues that no rules were violated and the discipline be reversed. The Organization cites Award 17 of PLB 7084 where Neutral Sidney Moreland, IV comments that, "The internet and its' unlimited possibilities of enabling discussions, posting, blogs texting, and mass emails, is fast replacing the traditional water cooler and break room chats, while work rules struggle to conform themselves equally as fast." and further states, "these latter day communication methods, such as the one engaged in by the Claimant (Facebook), may make any aspect of any conversation public, against the wishes of the conversationalists." The Organization also cites First Division Award 43079 where Neutral Peter Meyers ruled, "the Carrier must meet its burden of proof with sufficient evidence that the employee did something in violation of the Carrier's rules. In this case, the employee was off duty when he was making the post to social media and the nexus between those posts and his job was simply not proven by the Carrier."

In the instant case, Claimant was off duty and made a post directed to his Facebook group. A member of the group added a comment and sent it to individuals Claimant worked with who advised they were upset. The post did not refer to any business or individual but was strictly limited to criticizing a social/political organization. Individual with different views on social and political issues are required to work together without letting their view effect their job performance. In this case, we find there was no legitimate nexus between the post and Claimant job. We also find the post did not violate Carrier's Social Media Policy, Non-Discrimination and Anti-Harassment Policy or Rules of Conduct. Claimant will be returned to service, paid for time lost with deductions made for any outside earnings.

AWARD: Claim sustained.

  
David N. Ray, Chairman



Jacob McCahill, Carrier Member



J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on March 30, 2021.

**CARRIER MEMBER'S DISSENTING OPINION TO  
AWARD NO. 127 OF PUBLIC LAW BOARD 7239**

**(Chairman David N. Ray)**

In response to findings that are incomplete, conjectural, conclusory, contrary to the facts, and emboldening to future employee misconduct, the Carrier submits the following dissent to the Board's Award.

To begin with, the Board undersells the true nature of Claimant's misconduct in June 2020 by giving an incomplete description of the Facebook post that led to his dismissal for violation of multiple Company policies/rules on employee conduct. As the Award describes, Claimant's Facebook post included his own statement, "*And BLM can kiss my ass . . . does that cover everyone [?] #BLM #AllLivesMatter #Trump2020 #WalkAway #wheresmyprivilege*", along with a "picture" that had the following caption: "*Just saving time. Going to offend everyone all at once.*" However, what the Award fails to note is that this "picture" depicted a rainbow gay-pride flag overlaid with a Confederate flag's crossbars and a center circle containing both Jewish Stars of David and a Nazi swastika. If the Board is going to find so emphatically that the Carrier's policies/rules were not violated by Claimant's online conduct, then at the very least that conduct should be described in its totality.

Moving beyond an incomplete presentation of the facts, the Board also prepares for a Claimant-favorable finding by subtly discrediting the Carrier-favorable facts with conjecture that is uncalled for and contrary to the factual record. For example, while acknowledging that the Carrier received multiple employee complaints on Claimant's Facebook post, the Board nevertheless implies that these coworkers who were willing to speak up had some nefarious reasons for doing so—"The employees who made the complaints had their identities protected and could not be questioned on seniority standing or possible motivations for making the complaint." The reality is that Claimant's post was made to be offensive and quarrelsome (see above) and thus was a violation of multiple Company policies/rules on employee conduct (see below); consequently, the Carrier's violation finding should have been upheld.

Another example of the Board's conjecture/departure from the factual record concerns the manner in which Claimant's offensive post supposedly came to be viewed by his coworkers. For some unknown reason, the Board concludes that Claimant made his post within a private Facebook group and received a sarcastic comment ("*If this ain't racist, I don't know what is*") from a friend who then inexplicably forwarded the post without Claimant's permission to some of Claimant's coworkers:

- "*Claimant's responding friend was not permitted to testify and could not be questioned on providing the post to Claimant's fellow employees and what his motivation was for forwarding the post.*" (Award, pgs. 1-2)
- "*A member of the group added a comment and sent it to individuals Claimant worked with who advised that they were upset.*" (Award, pg. 2)

This finding is pure conjecture with no support whatsoever in the record. In fact, what the record actually shows is that Claimant made the post on his personal Facebook page, that a coworker viewed & screenshotted it, and that this coworker then complained to the Carrier by filing SpeakUp Report #344. Why the Board portrays the distribution of Claimant's post as an unintended hijacking is baffling.

As if to further minimize the severity of Claimant's online misconduct, the Board also theorizes that it is "unclear whether the post or the friend's response to the post caused the complaint to be filed or the uneasiness." This postulation is inaccurate on multiple fronts. First, there is nothing in the record to suggest that any Carrier employee complained about the comment made by Claimant's non-employee friend. To the contrary, through the SpeakUp complaints that were filed and the testimony provided the by Carrier's HR witnesses, the record amply demonstrates it was Claimant's post alone (and not the friend's comment) that caused reverberations in the Carrier's workforce. It is a further mischaracterization to suggest that Claimant's offensive post only generated "uneasiness" in the workplace; the testimony provided by the Carrier's HR witness and the contents of the SpeakUp complaints themselves conveyed a much stronger reaction from Claimant's coworkers to his post.

The Board ultimately found that Claimant's "post did not violate Carrier's Social Media Policy, Non-Discrimination and Anti-Harassment Policy or Rules of Conduct." This finding is the epitome of conclusory statement that is not supported by, and is in fact contrary to, the factual record. Consider the following:

- GCOR 1.6
  - "Employees must not be . . . quarrelsome or discourteous." (GCOR 1.6)
- KCSR Social Media Policy
  - "Employees must use good judgment and be respectful of the Company, its employees, customers, affiliates, and business partners at all times."
  - "Employee may not use social media to harass, threaten, libel or slander, malign, defame or disparage or unlawfully discriminate against the Company, its employees, customers, affiliates, or business partners."
  - "This policy incorporates by reference the Company's . . . Equal Employment Opportunity [and] Anti-Harassment . . . policies which apply to both on-duty and off-duty conduct."
  - "What is posted online is public, and the Company may review such information."
  - "Employees who violate this policy, or who violate other Company policies through their use of social media, may be disciplined up to and including dismissal."
- KCSR Non-Discrimination & Anti-Harassment Policy
  - "[T]he Company prohibits conduct that is inconsistent with this policy, even though it may not violate the law. The Company prohibits any unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an employee because of their race, color, religion, sex, sexual orientation, gender identity, national origin, . . . citizenship status, genetic information, . . . or any status protected by law."
  - "Specific example of conduct prohibited by this Policy include, but are not limited to:
    - disparaging, abusive and/or sexual words, phrases, e-mails, or materials that denigrate or show hostility toward an individual or group because of a Covered Status;
    - insulting communications or postings, including electronic media, telephone calls, and written documents that denigrate or show hostility toward an individual or group because of a Covered Status;
    - written or graphic material or objects that are sexually-oriented, obscene or criticize or show hostility or aversion toward an individual or group related to a Covered Status; and

- *conduct in violation of this Policy (such as the examples listed herein) that occurs during non-working hours, such as inappropriate telephone calls or text messages.*

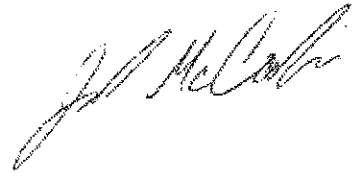
Somehow, the Board finds that Claimant's post described in detail above did not violate a single one of these policy or rule provisions. This is despite the fact that the picture implicated and depicted numerous protected categories—including sexual orientation/gender identity, race, color, religion, and ethnicity—in a manner that would reasonably be interpreted as disrespectful and discourteous. Although Claimant contends that he intended no offense and that the post was only made with jovial and sarcastic intent, his "kiss my \_\_\_\_" comment indicates a much more quarrelsome and combative mindset. The Board may not appreciate or agree with the content and scope Carrier's policies/rules on employees' off-duty conduct. The Board may further believe that dismissal was too harsh a result in this case. However, the fact that Claimant did violate the Carrier's policy and rule provisions cited above should not even be up for debate.

The Carrier concludes this dissent by visualizing the future employee misconduct that will be emboldened by this Award. Not only is Claimant reinstated, but he is effectively rewarded for his quarrelsome and discourteous conduct through the award of backpay. This sets precedent that is bound to have negative ripples well beyond the Carrier's workforce. It is fanciful to find, as the Board does, that there is "no legitimate nexus between the post and Claimant[s] job." Three different coworkers spoke out against the offensiveness of Claimant's post, which indicates a clear nexus to Claimant's work. And as the Board itself acknowledges through its citation to Award 17 of PLB 7054, internet communications have effectively replaced "traditional water cooler and breakroom chats." Claimant's quarrelsome and discourteous challenge that BLM can "kiss his \_\_\_\_" would have been unacceptable in the breakroom or at the water cooler, even if Black Lives Matter (BLM) is only "a social/political organization" as the Board dismissively finds. The Carrier sees no reason to treat Claimant's online conduct that was viewable by his coworkers any differently.

The Board notes that "[i]ndividual[s] with different views on social and political issues are required to work together without letting their view effect their job performance." The Carrier wholly agrees and therefore questions why the Board gives Claimant free rein to demonstrate such little respect and courtesy for the views of his coworkers. It's not 2011 anymore. While there may have been "a mitigating learning curve" in Award 17 that justified PLB 7054's employee reinstatement without backpay, the times have changed since then when it comes to employee's off-duty social media activity. After all, the carrier's "Social Media Guidelines" in Award 17 did not even contain disciplinary provisions. The Carrier's Social Media policy here, in contrast, clearly identifies the types of prohibited conduct and the disciplinary consequences for violations of the policy. The Carrier's policy also states the obvious in its Social Media Policy when it says that "*what is posted online is public.*" It is naïve to suggest posts like the one Claimant made have no bearing on the workplace when it is reasonable to expect that coworkers will view and be offended by them.

For the reasons stated above, the Carrier strongly dissents from the Board's Award. The evidence presented, if not arbitrarily discounted or dismissed, should have led to the Carrier's finding of policy and rule violations being upheld. The award of backpay is especially surprising and an unjustified deviation from both of the arbitration awards cited by the Board.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jacob McCahill".

Jacob McCahill  
AVP Labor Relations

PUBLIC LAW BOARD 7239

PARTIES BROTHERHOOD OF LOCOMOTIVE  
TO ENGINEERS AND TRAINMEN  
DISPUTE KANSAS CITY SOUTHERN RAILWAY COMPANY

AWARD NO. 128  
CASE NO. 128  
FILE: 2020-0400

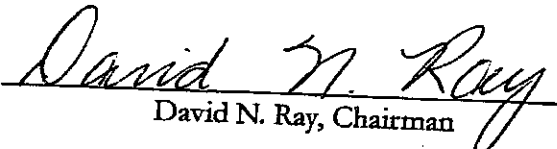
STATEMENT OF CLAIM: Claim of KCS Engineer Rowe Viola for the unwarranted discipline of letter of 2 points under the Availability Policy Train, Engine & Yard Employees. This claim is for removal of all notations of discipline from his personal work record of discipline assessed, and an additional day's pay for attending the hearing for alleged violation of The Kansas City Southern Railway Company's General Code of Operating Rules 1.1.5 - Duty - Reporting or Absence and The Kansas City Southern Railway Company's System Circulars No. 001 - Availability Policy for Train Engine & Yard(TE&Y).

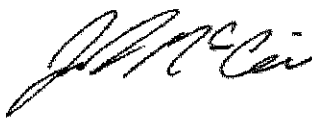
FINDINGS AND OPINION: This Board finds the parties herein are the Carrier and Employee, respectively, within the meaning of the Railway Labor Act, as amended: this Board has jurisdiction over this dispute; and the parties were given due notice of the hearing.

Claimant was employed for over 20 years. On June 6, 2020, while working as conductor on the LBC 107 at Bossier City, Louisiana, Claimant was charged with being in violation of Carrier's attendance policy between February 27, 2020 and May 27, 2020. As a result, a hearing was scheduled and based on the evidence, Claimant was assessed two points.

The evidence developed in the hearing confirms that Claimant violated Carrier's policy. The Organization argues that the discipline be reversed and Claimant be paid for time lost. In addition to Claimant's Friday/Saturday off days, Claimant marked off eight times affecting ten days mostly surrounding weekends and off days. Claimant presented no medical documentation not did he communicate any problems with his supervisor. The Carrier has a right to expect regular and reliable attendance from employees even when other issues may seem more important. The Board finds no reason to overturn the Carrier's decision.

AWARD: Claim denied.

  
David N. Ray, Chairman

  
Jacob McCahill, Carrier Member

  
J. Alan Holdcraft, Employee Member

Signed at Estero, Florida on March 30, 2021.