

**PUBLIC LAW BOARD 7239**

PARTIES      BROTHERHOOD OF LOCOMOTIVE  
                 ENGINEERS AND TRAINMEN  
                 TO

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

DISPUTE      KANSAS CITY SOUTHERN RAILWAY COMPANY

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.

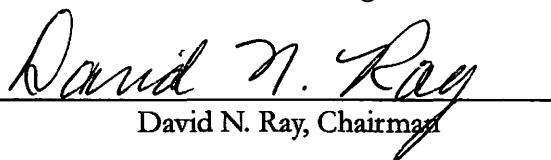
Claimant was employed for over twenty nine years. On February 27, 2020, Claimant was engineer on the LRH101-27, a local out of Roodhouse, Illinois, working an industry at Milepost 28.3 on the Godfrey Subdivision. The crew completed their work and released the Track Authority protecting the switch to 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