

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 14106  
Docket No. 13995  
14-2-NRAB-00002-140026

The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood Railway Carmen-Division of TCU/IAMAW  
(BNSF Railway Company

**STATEMENT OF CLAIM:**

- “1. That the Burlington Northern Santa Fe Railroad Company violated the terms of the current Agreement, in particular Rule 35, when on August 16, 2013, Carman Jacob Luptak was issued a Level S – 30 day record suspension with a one (1) year review period for alleged involvement in the derailment of BNSF 672225 on April 24, 2013.
2. That accordingly, the Carrier be ordered to remove all correspondence and record of this discipline from the Claimant’s personal record.”

**FINDINGS:**

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was assigned as a Carman Apprentice at the Mandan, North Dakota, Train Yard and Repair Track Facility. The Claimant was assessed a 30-day record suspension with a one-year review period following a formal Investigation in connection with the following:

“. . . your alleged involvement of moving car west on shop track 2132 resulting in the derailment of BNSF 67225 at approximately 1530 hours on April 24, 2013 while working as a Carman in the Mandan Yard.”

The underlying facts are that the Claimant and Carman Kautzman were assigned to move a freight car out of the shop to Track 2132 on April 24, 2013. The Claimant was operating a fork lift to shove the car while Kautzman was the groundman protecting the movement. The record evidence reveals that the Claimant maintained clear sight of Carman Kautzman during the movement. The car was coupled to other cars on Track 2132 and the last car in the string of cars derailed because the progression bar was up against the axle of the car.

The Carrier contends that both the Claimant and Carman Kautzman were in violation of Safety Rule S-14.3 in that they failed to visually inspect the entire area so as to insure that the path of travel was clear. The Organization, on the other hand, argues that the Claimant fully complied with the Safety Rule and properly relied on the signals of Carman Kautzman who was protecting the movement.

The Board notes that Carman Mizeur, who instructed the Claimant to make the shove and was present at the start of the movement, testified that Carman Kautzman had “went out, looked around, made sure everything was clear” and that Carman Kautzman was protecting the movement at the point of the shove while the Claimant started moving the car at a slow walking speed. In this respect, the Board finds that the Claimant was in compliance with Safety Rule S-14.3 because he did not exceed five miles per hour and he knew who was protecting the movement and how protection was to be provided. The Safety Rule further states that an employee – in this case Carman Kautzman, not the Claimant – “must be in position and provide visual protection.” The Board concludes that the Claimant did comply with the applicable Safety Rule and was not responsible for the subsequent derailment of the car.

Accordingly, the Board finds that the Carrier failed to sustain its burden of proof and rules that the discipline should be removed from the Claimant’s record.

**AWARD**

**Claim sustained.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

**Dated at Chicago, Illinois, this 17th day of December 2014.**