

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14107
Docket No. 13996
14-2-NRAB-00002-140027

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

(Brotherhood Railway Carmen-Division of TUC/IAMAW
PARTIES TO DISPUTE: (
(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 Stacy Kautzman 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 at the Mandan, North Dakota, Train Yard and Repair Track Facility. The Claimant was assessed a 30-day record

suspension with a three-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 Luptak were assigned to move a freight car out of the shop to Track 2132 on April 24, 2013. Carman Luptak was operating a fork lift to shove the car while the Claimant was the groundman protecting the movement. The record evidence indicates that Carman Luptak maintained clear sight of the Claimant, who was at the head of the move to provide Carman Luptak visual protection. 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 Board notes that Carman Mizeur, who instructed Carman Apprentice Luptak to make the shove and was present at the start of the movement, testified that the Claimant had “went out, looked around, made sure everything was clear” and that the Claimant was protecting the movement at the point of the shove while Luptak started moving the car at a slow walking speed. The Board finds that the Claimant did not make a full visual inspection of the path of travel despite the fact that he indicated that he did so on the date of the incident. Also, the Claimant as the employee at the point of the shove had the responsibility to insure that the movement could proceed in a safe manner. Because the Claimant failed to observe the position of the progression device on the last car of the string the Board finds that the Carrier satisfied its burden of proving the Claimant’s guilt of the charge.

Relative to the discipline assessed, the Carrier notes that the Claimant’s violation constituted a serious violation under its Policy for Performance and Accountability (PEPA) and that the policy provides for a 30-day record suspension under such circumstances. Because the Board finds that the discipline assessed was neither arbitrary nor capricious, it will not be disturbed.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

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

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