

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 42361  
Docket No. MW-42396  
16-3-NRAB-00003-130401

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employees Division -  
( IBT Rail Conference  
( BNSF Railway Company (former Burlington  
( Northern Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) day record suspension and a three (3) year review period commencing on September 14, 2012] imposed upon Mr. R. Tucker by letter dated September 14, 2012 alleged violation of MOWOR 6.3.1 Main Track Authorization in connection with charges of failure to contact dispatcher for proper track authority before going through pod signal and out onto the main track at or near Mile Post 14.7 on the Omaha Sub on June 20, 2012 at approximately 1140 hours was arbitrary, capricious and in violation of the Agreement (System File C-13-D040-4/10-13-0013 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Tucker shall now receive the remedy prescribed by the parties in Rule 40G.”

**FINDINGS:**

The Third 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.

On June 20, 2012, the Claimant was working as a Track Inspector in Gibson Yard on the Omaha Subdivision of the Nebraska Division. He was testing crossovers, and allegedly occupied the Main Track without authority.

It is the Carrier's position that to inspect a crossover track you need authority to access the main line. The Claimant did not request main line authority, but simply assumed the Yardmaster would. There is no evidence the Yardmaster called the Claimant back with confirmation of his authority to occupy the main track. The Claimant failed to follow up; he just assumed he had the authority. The Claimant admitted violating the rule. Regardless of whether the Yardmaster violated a rule, the Claimant remains accountable for his actions.

The Organization asserts that this case is simple: The Yardmaster is in control of the yard. The Claimant told him he needed to inspect certain areas, then the Yardmaster said "go ahead I'll get it for you." The Carrier now says the Claimant should have engaged in Monday morning quarterbacking. The Carrier acknowledges an employee is allowed to get track and time for another employee. This case is virtually identical to PLB 7564 Award 17 where the Board held that supervisors need to provide instruction so that nothing is left to chance. The Claimant should have been able to rely on what his Yardmaster said he would do. To hold an employee responsible for a supervisor's failure is nonsensical. Where there is a Yardmaster on duty, employees must comply with that Yardmaster's instructions.

The Organization's argument is well taken that the Yardmaster has control of the yard and the Claimant is entitled to rely on his representations. By the same token, the Carrier makes a valid point that the Claimant should not depend exclusively on what someone says they will do, without checking to make sure it was actually done. The Yardmaster's failure to obtain track and time when he said he would is a serious mitigating circumstance in this case, especially since he advised the Claimant to 'go ahead.' This phrase communicated an expectation of immediate track occupation as well as assurance of safety in so doing. The Carrier failed to give this substantial mitigating circumstance adequate consideration. As a result, its choice of discipline was entirely disproportionate to the offense.

The claim is sustained in part. The Level S 30-day record suspension with a 3-year review period shall be removed from the Claimant's record, and shall be replaced with a Standard Formal Reprimand with a 1-year review period.

**AWARD**

Claim sustained in accordance with the Findings.

**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 Third Division**

Dated at Chicago, Illinois, this 30th day of August 2016.