

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44246  
Docket No. MW-45559  
20-3-NRAB-00003-190412**

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

**(Brotherhood of Maintenance of Way Employees Division  
(IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(BNSF Railway Company (Former Burlington Northern  
(Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The discipline (dismissal) imposed upon Mr. C. Snow, by letter dated January 12, 2018, for violation of MWOR 6.3.3 Visual Detection of Trains in connection with his alleged failure to protect men or equipment on December 12, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-18-D070-8/10-18-0114 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Snow shall be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses and benefits.”**

**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 the day in question, the Claimant and Mr. Delano were using lookout protection. Mr. Burks then asked to see the lookout protection form, which is required to be filled out by the lookout before fouling the track. It is uncontested that at the time, the Claimant was acting as lookout. Neither the Claimant nor Delano could produce the form because it had not been filled out.

Maintenance of Way Operating Rule 6.3.3 “Visual Detection of Trains – Lone Workers / Lookouts” states: “Lone workers and lookouts are required to complete a Job Safety Briefing and the Statement of On-Track Safety before using Visual Detection of Trains.”

The Organization contends the Carrier failed to offer a fair and impartial hearing to Grievant, in violation of Rule 40. It points out that the Carrier’s Notice of Investigation dated December 14, 2017 was clearly improper and inaccurate because its charges against the Claimant were for conduct on December 12, 2018 near Mile Post 0.9. However, according to testimony from Carrier witness J. Meyer, the frog where the Claimant was working at on December 12, 2017 was located at Mile Post .185.

Aside from these procedural snafus, the Organization contends the Carrier has failed to meet its burden of proof. It maintains the Claimant otherwise met all of the substantive requirements necessary to establish track protection. He did everything the rules require, and the paper form was simply sitting on the center console ready to be filled out. In this context, neglecting to fill out the form was relatively nonserious and should be treated accordingly.

The Carrier argues the wrong date was nothing more than typographical error that should not affect the merits of the case. It insists the lapse involved in this case is a serious safety violation, and argues the penalty should match the gravity of the violation.

The Board can find no prejudice to the Claimant’s case as a result of the date error in the Notice of Investigation. The incident being investigated was a failure to fill out the form required of lone lookouts. There has been no confusion about this

and no adverse consequences from the error in the Notice. As such, we find no cognizable procedural violation in this case and turn to the merits.

It is well established that the Claimant and Delano followed every aspect of the applicable rule except filling out the paper form. It follows that the importance of that form rests at the crux of this case. The form is reproduced below:

### 6.3.3 Visual Detection of Trains

On-track safety may be provided by using visual detection of trains as follows.

STATEMENT OF ON-TRACK SAFETY					
A lone worker using individual train detection or a lookout using train approach warning to establish on-track safety must complete this form before fouling a track.					
To complete this form:					
1. Provide the following information:					
Name of Lone Worker/lookout: _____					
Date: _____ Division: _____					
Subdivision: _____					
Location: From MP _____ to MP _____					
Designated Place of Safety: _____					
Method of Warning: _____					
Time form completed: _____					
2. In the table below, place an X in the box adjacent to the maximum authorized timetable speed of trains at the location specified above. Observe the minimum required distance between the approaching train and the employees when the place of safety has been reached.					
Maximum Authorized Timetable Speed in MPH	Minimum Separation Upon Reaching Place of Safety		Maximum Authorized Timetable Speed in MPH	Minimum Separation Upon Reaching Place of Safety	
	X	Feet		X	Feet
5		110	50		1,100
10		220	55		1,210
15		330	60		1,320
20		440	65		1,430
25		550	70		1,540
30		660	75		1,650
35		770	80		1,760
40		880	85		1,870
45		990	90		1,980

Note: When the maximum authorized timetable speed is not shown on the form, use the next higher speed.

This form requires the lookout to specify the mileposts limits of his/her location. This requirement verifies that the lookout is fully aware of where (s)he is. The lookout must also specify the designated place of safety and the method of warning. The specification of these arrangements confirms that the lookout and his/her co-workers are fully prepared for the appearance of a train. Next, the lookout must confirm the maximum authorized timetable speed of trains at his/her location. The form further requires relation of the minimum required distance between the approaching train and the employees when the place of safety has been reached.

We realize many if not all of these designations would have been covered in a briefing. However, the form clearly serves the safety function of verifying in writing that the lookout did not miss anything during the briefing and has fully thought through and understood all aspects of his/her function as a lookout at the precise location in question. This confirmation is a critical part of the Carrier's safety mechanisms. It springs from the expectation that when crucial safety aspects of a job are both orally discussed and confirmed in writing, two things happen: the employee is much less likely to miss a beat and the Carrier has done all it can to make sure its lookouts are fully and firmly prepared for their critical function.

Accordingly, we find the filling out of the form serves a real and significant role in verifying both that lookouts are fully prepared, and that their safety is maximized. Accordingly, the Carrier was within its rights to designate this incident as a serious violation. Insofar as the Claimant was already under a 12-month review period, his dismissal should be upheld.

**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 Third Division

Dated at Chicago, Illinois, this 23rd day of October 2020.