

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Corrected

**Award No. 44843
Docket No. MW-47186
23-3-NRAB-00003-220079**

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day Level S record suspension with a three (3) year review period] imposed upon Mr. K Janssen, by letter dated August 18, 2020, for alleged violation of MWOR 6.2.1 Authority Behind Trains was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File T-D-6479-S/11-20-0491 BNR).**
- (2) The appeal* as presented, by letter dated November 19, 2020, to General Director Labor Relations Joe Heenan shall be allowed as presented because said claim was not disallowed by Mr. Heenan in accordance with Rule 42.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, Claimant K. Janssen shall have his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.**

***The initial letter of claim will be reproduced within our initial submission.”**

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.

Factual Background:

The Carrier alleges that on June 9, 2020, Claimant, a flagman, failed to communicate with the train crew on the BNSF 6580 prior to occupying the track behind the train. Following investigation, the Carrier determined that he was guilty of violating Maintenance of Way Operating Rule (MWOR) 6.2.1 Authority Behind Trains. As a result, he was assessed a Level S Thirty (30) Day Record Suspension, in addition to a Three (3) Year Review Period. This decision was grieved and processed through the parties' grievance procedure to consideration by this Board.

In the time following the November 7, 2022 hearing, the parties have resolved between themselves a procedural dispute about the timing and manner of transmission of the Carrier's declination letter.

Position of Organization:

The Organization argues there are mitigating factors in the case that were not taken into consideration: Claimant, when realizing his failure to talk directly with the Train Crew of Eastbound 6580, immediately called his supervisor, Roadmaster Mattison, to advise of his technical failure. Thereafter, Claimant was simply instructed to finish the days' work, which he did. As the Organization sees it, the incident was relatively minor, and the non-serious nature of the event is evidenced by the fact that the Carrier did not pull him from service or give him a urine analysis. Claimant was honest and forthright during the incident, the investigation, and the entire dispute.

Position of Carrier:

In the Carrier's assessment, Claimant was in violation of Maintenance of Way Operating Rule 6.2.1 (Authority Behind Trains) which states that the employee in

charge must establish direct radio contact with a crew member of each train listed on the authority and verbally: • Confirm train identity by engine initials, number, and direction • Determine the milepost location of the trains, and • Instruct the crew not to make a reverse movement within the authorized limits without contacting the employee in charge.

In this case, Claimant admitted he failed to communicate with the train crew prior to occupying the track behind the train, which is a violation of MWOR 6.2.1 and a serious rule violation. The Carrier concludes it has met its burden of proof.

Analysis:

The Board does not agree with the Organization's characterization of Claimant's lapse as minor. The Carrier operates a business that is, by its nature, quite dangerous. It has not been unreasonable in attempting to manage safety concerns by treating them as serious disciplinable events. Certainly, we see some safety violations as less serious than others. But it is not for the Board to manage the Carrier's business. As long as their exercise of discretion over the rules and their enforcement is not arbitrary, discriminatory, unreasonable or capricious, the Board should not substitute its judgment for that of the Carrier.

The passing train needs communication in order to know when it is clear of personnel and work sites. This information is important if not crucial in assessing decisions regarding the operation of the train. Were there no expectation of such communication, trains could falsely imagine that they are clear of potential hazards. We find the Carrier was within its rights to treat this incident as a serious safety violation.

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 10th day of March 2023.