

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 100, (Case No. 100)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing April 29, 2011, when Claimant, S. P. Beck (6440002), was issued a Level S 30-day Record Suspension with a three year review period for failure to provide required track inspection defect reports in excess of a 2-month period from December 1, 2010 to February 16, 2011. The Carrier alleged violation of MOWOR 1.13 Reporting and Complying with Instructions.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be compensated for his lost time and expense and otherwise made whole." (Carrier File No. 14-11-0115) (Organization File No. 110-13N1-116.CLM)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On February 23, 2011, Claimant was directed to attend a formal Investigation on March 4, 2011, which was mutually postponed until March 31, 2011, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to provide required track inspection defect reports in excess of a 2 month period, from December 1, 2010 to February

16, 2011, Mile Post 291.5 to Mile Post 343.4, on the Lampasas Subdivision, in violation of Engineering Instructions 2.4.6, Record of Track Inspections and, Maintenance of Way Operating Rule 1.13, Reporting and Complying with Instructions."

On April 29, 2011, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30-Day Record Suspension with a three year probationary period.

It is the Organization's position that after the discrepancy was discovered Claimant was repeatedly coached and counseled regarding the importance of entering correct information in the computer. It argued that was a form of discipline without benefit of representation. It further argued that if the Claimant had been guilty of anything in this instance, which he was not, the discipline assessed was excessive. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier the Claimant violated the aforementioned Rules when he failed to provide track inspection defect reports in excess of a two month period while working as a Track Supervisor. It argued that because the Claimant failed to submit any reports on his territory the Carrier was fined by the FRA for 15 code 1 violations it was unaware of which was a serious offense. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and will first address the Organization's argument that the Claimant was disciplined when he was allegedly coached and counseled prior to the Investigation regarding the charges under Investigation. Contrary to the Organization's assertion countless Boards have determined that "coaching and counseling" is not discipline and it will not be used in the assessment of discipline. The fact that the Claimant was coached and counseled in the past does not mean that he has already been disciplined. It is determined that the Investigation and appeal process met the guidelines of Rule 13(a) the Discipline Rule and Appendix No. 11.

On pages 12 and 13 of the transcript the Claimant was questioned as to whether or not he had properly reported track defects in a timely manner as follows:

"David Mooney: Can you tell me what you know about this incident under investigation?"

Steve P. Beck: That I didn't report defects for a two month period, in TIMS.

David Mooney: Mr. Beck, did uh, did you report defects in TIMS between December the 1st, 2010 and February 16, 2011?

Steve P. Beck: No.

David Mooney: Mr. Beck, uh, what was your assigned territory between December 1, 2010, and February 16, 2011?

Steve P. Beck: Mile post 274.1 to 343.7.

David Mooney: And Mr. Beck, did you find any defects on your assigned territory between December the 1st, 2010, and February 16, 2011?

Steve P. Beck: Yes.

David Mooney: How many?

Steve P. Beck: Too numerous to mention.

David Mooney: Mr. Beck, you said you found FRA defects on your assigned territory between mile post, to your assigned territory, between December the 1st, 2010, and February 16, 2011, did you report them properly?

Steve P. Beck: No I didn't. (*Underlining Board's emphasis*)

In his defense the Claimant suggested that the reason he did not submit any track defects into TIMS was because he had not been properly trained on how to input the information via his laptop computer, however, that argument is not persuasive especially in view of the fact that the Claimant never stated he requested any training on input of track defects. Substantial evidence was adduced at the Investigation that the Claimant was guilty as charged.

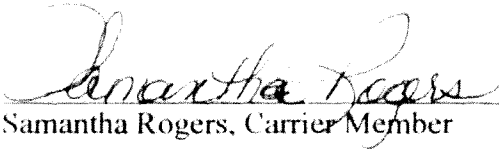
The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 32 years of service with one serious Record Suspension a little over one year prior to the incident under charge. The discipline assessed in this case will not be set aside as it was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) and it was not excessive, arbitrary or capricious. The claim will remain denied.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David D. Tanner, Employee Member

Award Date: 10/22/12