

PUBLIC LAW BOARD NO. 7564

Case No. 4/Award No. 4
Carrier File No. 10-11-0693
Organization File No. C-11-D040-39

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION - IBT)

Statement of Claim:

The Carrier violated the Agreement when on September 1, 2011 Claimant Robert A. Wolford, Jr. was assessed a Level S 30-Day Record Suspension and a 3-year review period for violating MOWOR 6.3.1 Main Track Authorization and MOWOR 10.3 Track and Time.

As a consequence of the contractual violation noted above, the Carrier should purge the personnel records of the discipline.

Facts:

By letter dated July 7, 2011 the Claimant was directed to attend a July 20, 2011 investigation "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to provide proper main track protection (A Critical Decision failure) when you allegedly released the authority you were occupying on July 1, 2011 at 1626 hours on Chillicothe Sub, east of Stronghurst while assigned as Track Inspector headquartered in Stronghurst, IL (Carrier first knowledge 7-6-11)." After an agreed-upon postponement, the investigation was conducted on August 9, 2011. On September 1, 2011 the Carrier assessed the above-noted discipline.

Carrier's Position:

The Carrier conducted a full and fair hearing with no bias or partiality shown by the conducting officer. There was no need to arbitrarily make the Claimant's personnel record a part of the investigation. The Claimant committed a serious rule violation for which he was held accountable, as Supervisor Bills stated that the scenario presented by the Claimant to account for the improper release of authority could not have occurred.

The Claimant was neither pre-judged as guilty nor intimidated. He should not receive pay to attend a hearing.

Organization's Position:

The investigation was not fair and impartial because the Claimant was pre-judged, which is a violation of Rule 40. Furthermore, the Carrier refused to provide documents requested before the hearing or to pay the Claimant for attending the hearing. The Carrier relied on the Claimant's disciplinary history, but did not enter a copy into the record so that the Claimant could check for discrepancies. The Carrier has simply punished the Claimant for a rule violation rather than using the incident as an opportunity for training and learning. The discipline was excessive because the Claimant has shown that he had previous problems with the Smart Mobile Client ("SMC"), he was trying to work safely and to be in compliance with MOWOR 6.3.1 and the fault was with Carrier technology, not Mr. Wolford.

Findings:

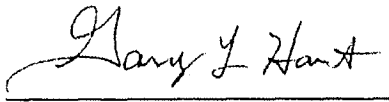
There were no irregularities in the investigation and the Claimant received a fair and impartial hearing. The parties have not agreed to pre-hearing discovery and thus the Carrier was not required to respond to requests for documents. Nor was the Carrier required to overlook what it believed was a serious violation of MOW operating rules. The Carrier's expert in the technology involved testified that the SMC/computer could not have recorded the wrong authority despite the computer crash that had occurred. He has never seen this happen even though there have been problems with SMC. While the Claimant did not intend to improperly release his authority and certainly did not believe that he had done so, he also testified that it was possible that he had. Such a mistake, even if inadvertent, could lead to serious injury or loss of life. There is no basis for this Board to ignore or discount Supervisor Bills' testimony. The Carrier has met the burden of proving the charge with substantial evidence.

Award:

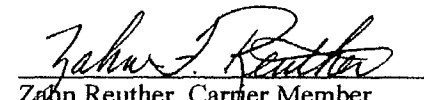
Claim denied.

Order:

The Board, after consideration of the dispute identified above hereby orders that an award favorable to the Claimant not be made.



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Member

Austin, Texas
November 1, 2012