

PUBLIC LAW BOARD NO. 7585

Case No. 6/Award No. 6
Carrier File No.: 10-11-0648
Organization File No.: C-11-D040-37
Claimant: M. Smyth

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION - IBT)

FACTS:

Claimant Smyth worked as a Truck Driver in Denver, CO. On August 22, 2011, Traveling Mechanic Ryan Carlson went to the Oil Track switch at the Denver Terminal. A WB lock was already on the switch. Carlson said he locked and tagged the switch out of service. He tagged the equipment behind the tamper, performed lock out tag out on the tamper itself and began working on it. He saw no one else in the area. While he was under the tamper working, Trackman David Janulewicz unlocked the switch and flagged through Claimant. Claimant, with Andrew Slaughter in the passenger seat, drove a boom truck down the Oil Track and struck the tamper. There was \$500 in damage to the tamper; Carlson was not hurt. Smith received a Level S record suspension with a one-year review for this incident.

CARRIER POSITION:

The track was properly protected when Claimant came onto the Oil Track and struck a tamper. He placed the mechanic in danger. Smyth backed into an out of service track without guidance and has admitted as much. There was no briefing regarding entry into the track. This constitutes violation of MOWOR 1.19 – Care of Property, 1.6 – Conduct – Careless of the safety of themselves or others and 12.8 - Backing.

ORGANIZATION POSITION:

The hearing was neither fair nor impartial because the Hearing Officer allowed a witness to testify who was not specified in the notice. Further, the Officer himself testified and was leading his witnesses. The truck driven by Smyth had authority to occupy the track. Carlson failed to properly protect himself by using someone else's protection and by failing to brief the workers who came in the area. He should have used his own lock on the switch. The damage to the tamper was very minor and the machine was not disabled. The discipline is excessive and without merit.

DECISION:

If the addition of a new witness for the carrier was seen as prejudicial to the organization, a postponement should have been requested. When the organization made no such request, it waived the procedural issue. The conduct of the hearing officer was consistent with the investigatory nature of the hearing.

Carlson was not negligent when he used the WB lock that he found on the switch in question. He did not see anyone to brief about his work on the tamper so he could not have been expected to conduct a briefing. Smyth had authorization to come onto the track. However, Carlson's truck was in the vicinity; Smyth should have noticed this and been aware that a mechanic was working in the area. Had he done so, this would have prompted a briefing with Carlson. Instead, Janulewicz unlocked the switch and signaled the boom truck through. He stayed at the switch and Smyth never designated a ground guy to guide him down the track. As driver, Smyth was responsible for safety. Roadway Equipment Supervisor Shawn Andrews stated a flagger should be on the ground when moving equipment comes within 50 feet of standing equipment. Hence, regardless of whether Smyth knew Carlson was under the tamper, he should have put Slaughter on the ground to avoid getting too close to the tamper. He was negligent in failing to do so.

AWARD:

The claim is denied.

March 18, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member



D. J. Merrell, Carrier Member