

**P.L.B. No. 7585**

**Case No. 28**

**Award No. 28**

**PUBLIC LAW BOARD NO. 7585**

**CARRIER FILE NO. 11-11-0067**

**ORGANIZATION FILE NO. B-M-2275-W**

**CLAIMANT: Loren K. Fishell**

**Parties To Dispute:**

Brotherhood of Maintenance of Way Employees Division – IBT  
& BNSF Railway Company

**Statement of Claim:** *The Carrier violated the Agreement on when it assessed Claimant Loren K Fishell (4570495) a Level S 30-day Record Suspension with a 1-year review period for violation of Maintenance of Way Operating Rules 1.1-Safety, 1.6-Conduct, 11.2-Requirements for Operating Roadway machines, and 6.53-Getting On and Off Equipment, for alleged failure to properly secure a machine by not setting the brakes causing it to track travel unattended, and careless reaction for safety by attempting to stop tamper by using a Regulator, while working on the Glasgow Subdivision on May 5, 1020.*

**Background Facts:**

On May 5, 2010, Claimant Fishell was operating a tamper and left the front buggy rack down. He exited the tamper and left it in gear without putting the brake on. When he lifted the front forks, it began moving. Subsequently, the Claimant was able to access

the controls to stop it. The Carrier determined this was a breach of applicable safety rules and issued a Notice of Investigation describing the conduct of concern but citing no specific rules. The investigation took place on August 11, 2010, following which the Carrier assessed the Claimant a Level S 30-day Record Suspension with a 1-year review period.

**Opinion of the Board:**

The Board has thoroughly reviewed the transcript of Investigation and the subsequent on-property correspondence in this case. We conclude that the Carrier failed to carry its burden of proof that the Claimant is culpable for a violation of any of the rules for which he was cited. Consequently, the claim will be sustained.

**AWARD:**

The claim is granted. The Carrier shall immediately remove the discipline from Claimant's record with seniority, vacation and all other rights unimpaired, and make him whole for all time lost as a result of this incident.

**Order:**

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.



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Patricia Thomas Bittel  
Chair and Neutral Member

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Donald Merrell,  
For the Carrier

A handwritten signature in black ink, reading "Gary Hart", written in a cursive style. The signature is positioned above a horizontal line.

Gary Hart,  
For the Organization

Dated: April 19, 2014