

In the Matter of the Arbitration Between:
BURLINGTON NORTHERN SANTA FE

and

Case No. 7
Claim of J. A. Mead
Level S 30-Day Record
Suspension - Failure
to Complete Multiple
Work Group Form

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION

STATEMENT OF CLAIM: Claim on behalf of Foreman J. A. Mead requesting removal of the Level S 30-day record suspension and three-year review period from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee, within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein.

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Maintenance of Way crafts. The Board makes the following additional findings.

Claimant has worked for the Carrier since July 16, 2007. On August 17, 2011, Claimant was required to complete a multiple work group track authority form. In doing so, he failed to write down the five-digit authority number, written at the top of the form, in the section headed "Multiple Work Groups Using the Same Authority."

The Carrier convened an investigation at which the above evidence was adduced. Based on the record, the Carrier found Claimant in violation of MWOR Rule 6.3.1 (Main Track Authorization).

The Organization protested the discipline, which the Carrier denied on appeal. The Claim was progressed on the property on an expedited basis, up to and including the highest designated official, but without resolution. The Organization invoked arbitration, and the dispute was presented to this Board for resolution.

POSITIONS OF THE PARTIES: The Carrier argues that it met its burdens to prove Claimant's violations of the Rules and the appropriateness of the penalty. It asserts that the facts and

testimony presented at the investigation make it clear that Claimant failed to write down the Authority number in the section titled "Multiple Work Groups Using the Same Authority." Claimant admitted at hearing that the Authority number was missing because he had neglected to write it down. BNSF contends that, when an employee admits guilt, there is no need for further proof.

With respect to the penalty, BNSF argues that it gave due consideration to Claimant's personal record and that the assessed discipline was appropriate due to the seriousness of the violation. It asserts that the three years' probation could not be reduced because Claimant had not completed at least five years' service. The Carrier maintains that the discipline imposed is appropriate and that leniency is not in the Board's authority.

The Carrier urges that the claim be denied as without merit.

The Organization argues that the Carrier has charged Claimant with violating the entire MWOR Rule 6.3.1 when, at most, he violated a very small portion of the rule by inadvertently forgetting to write down the five-digit authority number on the form. It points out that the form can only have one authority number associated with it and contends that it is redundant to require that the number be placed in both portions of the form. The Organization asserts that Claimant's minor error should have been addressed and corrected immediately rather than conducting an investigation.

With respect to the penalty, the Organization maintains that the Carrier has assessed Claimant nearly the maximum penalty for this very minor infraction. It contends that the discipline is excessive.

The Organization urges that the Claim be sustained, that the Level S 30-day record suspension and three-year review period be removed from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

DISCUSSION AND ANALYSIS: Rule 6.3.1 requires employees to document the Authority number and the name of each work group using the Authority. Evidence establishes that Claimant failed to meet this obligation. Although the Authority number appears at the top of the Track Authority Form, Claimant conceded that he neglected to write down the same Authority number at the bottom of the form, under the heading "Multiple Work Groups Using the Same Authority."

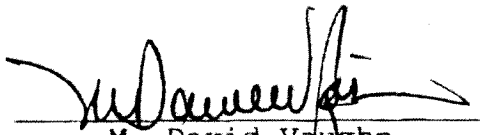
The Board recognizes the obligation under the Rules for employees to document the Authority number in two places on the same form. Claimant admits that he failed to do so. As indicated,

the evidence persuades the Board that Claimant failed to meet his obligation, thereby violating the Rule. However, the Agency failed to demonstrate how this error, which appears to be minor and, which Claimant had not previously made, constitutes a serious violation for which a lengthy record suspension is appropriate.

Given the nature and circumstances of Claimant's violations, the Board concludes that the imposition of a Level S 30-day record suspension and three-year review period was excessive. The Award so reflects the Board's determination as to the appropriate penalty.

AWARD: The claim is sustained in part and denied in part. The Carrier met its burden to prove Claimant guilty of violating MWOR Rule 6.3.1, but failed to prove his Level S 30-day record suspension to have been an appropriate penalty. Claimant's Level S 30-day record suspension shall be rescinded and reduced to a Formal Reprimand and a 12 month review period.

Dated this 27 day of March, 2013.


M. David Vaughn,
Neutral Member


Carrier Member
Ms. Samantha Rogers


Employee Member
Mr. David Tanner