

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY
(Former ATSF Railway Co.)

Case No. 398 – Award No. 398 – Savoy
Carrier File No. 14-10-0191
Organization File No. 110-13N1-1067.CLM

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing July 18, 2010, when Claimant, John T. Savoy (6448849), was issued a Level S 30-day Record Suspension with 1 year probation, concerning his failure to inform the Train Dispatcher on Track and Time Authority that all employees and multiple work groups using the authority were clear of tracks before reporting clear of authority limits on July 18, 2010. The Carrier alleged violation of MOWOR 2.14.2 Before Reporting Clear of Authority Limits.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from Claimant's record this discipline and he be compensated for his lost time and expense and otherwise made whole.

FINDINGS:

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, John T. Savoy, has been employed by the Carrier since 1993. On July 21, 2010, the Carrier charged Claimant to attend an investigation "for the purpose of ascertaining the facts and determining (his) responsibility, if any, in connection with (his) alleged failure to inform the Train Dispatcher on Track & Time Authority 150-57 on July 18, 2010 at approximately 1729 hours that all employees and multiple work groups using the authority were clear of tracks before reporting clear of authority limits, as required by

Maintenance of Way Operating Rule 2.14.2, Before Reporting Clear of Authority Limits.” Following the investigation, the Carrier determined that Claimant had violated Carrier rules as alleged and assessed him a Level S 30-day record suspension and a one-year review period.

Maintenance of Way Operating Rule 2.14.2, Before Reporting Clear of Authority Limits, effective December 2, 2009, provides:

Before a field employee reports clear of authority limits, and the Train Dispatcher/Control Operator accepts the information, the following must occur:

- The employee will provide their name or other identification and the authority number to be reported clear to the Train Dispatcher/Control Operator.
- The Train Dispatcher/Control Operator will have the required form or computer screen displayed for data entry and confirmation.
- The employee will inform the Train Dispatcher/Control Operator that all employees and multiple work groups using the authority are clear of track(s).
- The Train Dispatcher/Control Operator and field employee must carefully match the verbally transmitted information against the authority form to ensure the information matches and is correct.

The facts of this case are not in dispute. Patrick McAleese, Carrier Roadmaster in Alvin, Texas, testified at the investigation that he was Claimant’s supervisor at the time of the incident. Claimant was working as a track supervisor, providing protection for a Union Pacific rail gang. Mr. McAleese explained that he had been notified, by e-mail, that routine monitoring of radio transmissions to ensure rules compliance had noted an exception concerning Claimant’s conduct on July 18, 2010. The e-mail was read into evidence at the investigation and provides, in pertinent part:

The employee (Claimant) cleared Track & Time Authority 150-57 with the Train Dispatcher at 17:20:00C. The employee did not inform the Train Dispatcher, nor did the Train Dispatcher inquire, that all employees and multiple work groups using the authority were clear of track(s) before reporting clear of authority limits as required by MWOR 2.14.2.

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This exception meets critical decision criteria (Reporting Clear/Releasing Authority Limits).

The radio transmission at issue was also played into the hearing record:

1728:50, July 18, 2010.

Claimant: Savoy. Yes sir, I can give you back that Brownie and Main.
Dispatcher: Alright, 150-57 ready.
Claimant: Okay, Foreman Savoy ready to release that uh second time authority 150, 1, 5, 0-57, uh on Brownie and Main between uh that Algoa cross over uh no, and uh CPH uh 341 no.
Dispatcher: Alright Foreman Savoy reporting clear on authority 15-57 Algoa cross over CPH341 1729 1-7-2-9, is that correct?
Claimant: That is correct and uh, that's uh, PPH341 switch is back on motor.
Dispatcher: 341 back in move, alright thank you.
Claimant: Alrighty and ugh just as soon as I get with this uh Signal Maintainer uh, uh, I think that gang got to go back out and do a little prep uh pushing rubber down on the crossing in the siding.
Dispatcher: Okay uh, yeah Peco got time he has joint time with you.
Claimant: Yeah he talk with me uh, Peco.
Dispatcher: Yeah okay.
Claimant: Alright.
Dispatcher: Alright bud, bye.

1728:59, July 18, 2010.

Mr. McAleese explained that Claimant failed to adhere to Rule 2.14.2, in that he did not inform the dispatcher that all employees and multiple work groups in the authority were clear of the tracks. Mr. McAleese stated that Claimant cleared his track and time authority, but did not brief with the dispatcher that all multiple work groups were also clear. Mr. McAleese acknowledged that the transmission showed no misunderstanding between Claimant and the dispatcher as to the track and time limits being released, but there was no way from Claimant's statements for the dispatcher to know whether there were multiple groups working on the track or not.

Mr. McAleese further explained that the applicable rule requires two types of verification: The actual authority limits, by specific authorization number, and that all multiple work groups in those limits were clear. Mr. McAleese acknowledged that the rule did not require that Claimant use set or specified language in his communication with the dispatcher. Mr. McAleese also acknowledged that there was no report that anyone had in fact failed to clear the track.

Mr. McAleese further testified that he provides his employees daily briefings on how to report multiple work groups, among other items, and explains that those groups must be specifically identified when an employee releases a track warrant or track and time. He added that management had also conducted numerous stand downs and conference calls concerning all rules changes. While Mr. McAleese stated that he had not sat down and personally explained the rule to Claimant, he did not believe the matter could be viewed as a training issue because of the multiple conference calls and conversations with employees as to how to release. He stated that management had also provided employees with specific examples.

Claimant testified at the investigation that on the day at issue a UP rail gang and a Carrier signal maintainer were working under his responsibility. He added that the signal maintainer also had his own authority. These were, he explained, separate work groups, and the actual work was being performed on the Browning Main.

Claimant explained that when there are multiple work groups under his authority, he is required to list them on his track and time authority. He explained that the purpose of that action is to record those groups specifically so it is known that protection must be provided for another group. He stated that he is required to document a beginning time and have a briefing with those work groups. He also acknowledged that he is required to document an ending time, to make sure that everyone has cleared the track.

Claimant acknowledged that when he released his authority in the instant matter he did not report to the dispatcher that all of his multiple groups were clear. He testified that he had about three earlier conversations with the dispatcher that day. In one, he stated, he kept the dispatcher updated as to the status of the rail gang, letting the dispatcher know that that gang would have an overstay. In another, Claimant stated, the dispatcher informed him that trains were starting to back up and he wanted Claimant to clear the track. Claimant maintained that the dispatcher was aware of what he was doing. He added that he physically made sure everyone was off the track before releasing, and that he and the dispatcher had an understanding that the limits would be clear when he got ready to release the track.

Claimant acknowledged that he had attended a rules "start up class" in January. He also stated that he was "kind of familiar" with the requirement that he use specific language when he released a track warrant, and "kind of vaguely remember(ed)" that he needed to do it on track and time.

The Carrier's Policy for Employee Performance Accountability (PEPA) provides that an employee involved in a serious incident, as enumerated in the policy's Appendix B, will receive a 30-day record suspension and may be offered training to correct the underlying behavior. Appendix B lists as serious violations numerous safety infractions. The PEPA also provides for a serious-incident review period of 12 months for employees who have completed at least five years' service and who have been injury and discipline-free for that period. Claimant's record shows no previous discipline.

The Carrier states that a review of radio transmissions from the field to the dispatch center revealed that Claimant violated Carrier safety rules when he did not properly release multiple work groups under his track authority. Rule 2.14.2, the Carrier asserts, requires a specific procedure to be followed when there is more than one work group on the track working under the same time and track authority. As for the Organization's assertion that there had been a change in the rule which was not conveyed to the field, the Carrier notes the testimony of Roadmaster McAleese that the rules are read on the morning conference call and that General Orders regarding rule changes are issued to all employees. Indeed, the Carrier states, Claimant testified that he vaguely recalled receiving instruction on this rule.

Moreover, the Carrier points out, Claimant admitted that he did not report to the dispatcher that all of his multiple groups were clear when he released his authority. Claimant also acknowledged, the Carrier notes, that it is important to document the ending time in such situations to make sure that everyone has cleared the track.

The Carrier asserts that Claimant's admission is sufficient to satisfy its burden of proof, as has been held by various arbitration boards in this industry. With respect to the penalty, the Carrier argues that the gravity of the instant situation cannot be overstated. The fact that no catastrophe occurred, the Carrier states, does not absolve Claimant of his responsibility to follow rules which are in place to protect the safety of Carrier employees. The potential for a dangerous situation was present, the Carrier concludes, and its determination that Claimant committed a serious rule violation is correct. The Carrier urges that the claim be denied.

The Organization states that the Carrier disciplined Claimant as the result of a "remote audit," and this case involves a dispute regarding language commonly used on the track to release authority. The Organization notes that the Carrier failed to provide the recordings of three conversations between Claimant and the dispatcher which took place prior to the one at issue. The Organization states that these recordings would show that Claimant informed the dispatcher that all of the employees working with him were clear of the tracks and Claimant was about to release his on-track authority. The recording that was played at the investigation, the Organization states, shows that there was no misunderstanding between Claimant and the dispatcher, and the Carrier's key witness conceded as much.

The Organization stresses that the applicable Carrier rule does not mandate that any particular language be used between an employee and the dispatcher in this situation; rather, the rule simply requires that there be a clear understanding that all personnel are in the clear and off the track. The record in this case, the Organization urges, clearly demonstrates the existence of such an understanding.

With respect to the penalty, the Organization states that even if Claimant had been guilty of a serious infraction, the appropriate method of addressing a performance issue, as opposed to a behavioral problem, is to correct the situation through non-disciplinary measures such as coaching and counseling, or training. The Organization concludes that

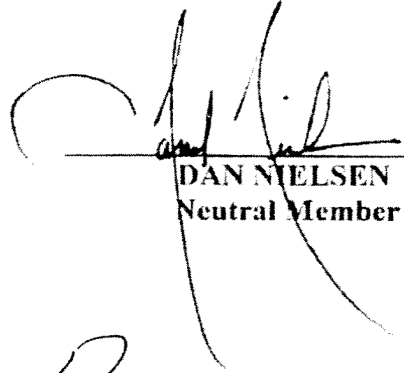
the discipline assessed against Claimant is excessive and unwarranted, even if the Carrier had proven the asserted rule violation. The Organization requests that the claim be sustained.

We have carefully reviewed the record in its entirety. The rule at issue is a serious one, intended to protect the safety of employees working on tracks by requiring specific identification that all multiple work groups are off the tracks before authority can be released. This rule is obviously intended to avoid any possibility that, in a general release of authority, a work group might be overlooked. While the Organization is correct that the rule requires no specific language or words be used, the rule is quite clear that the field employee must inform the dispatcher that "all multiple work groups" are clear of the tracks, and the field employee and dispatcher must match the field employee's statement against the authority form, which lists the multiple work groups, to ensure everything is correct. There is no question, as Claimant admitted, that that did not happen here. Nor did Claimant ever claim that he provided the dispatcher such information in any of the earlier discussions they had that day, thus negating the Organization's contention that he was prejudiced because the transmissions of those conversations were not brought forth at the investigation.

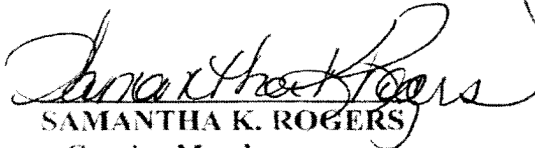
Moreover, we give no credence to the Organization's contention that Claimant lacked adequate training on the recently-implemented rule and his conduct should be excused on that basis. The rule is clear on its face, the Carrier's witness testified that the rule had repeatedly been explained to the employees, and Claimant acknowledged as much. For all of these reasons, we conclude that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. With respect to the penalty assessed, it was consistent with the Carrier's PEPA and we cannot say that it represents an unfair or arbitrary exercise of the Carrier's discretion to determine penalties.

AWARD

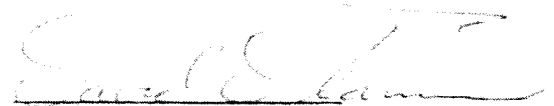
Claim denied.



DAN NIELSEN
Neutral Member



SAMANTHA K. ROGERS
Carrier Member



DAVID TANNER
Organization Member

Dated this 28 day of Feb, 2012.