

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY

Case No. 448 – Award No. 448 – Claimant: Cameron
Carrier File No. 14-13-0248
Organization File No. 110-SF13N1-1327

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing April 12, 2013, when Claimant, Marvin D. Cameron (1616457), was disciplined with a Standard Formal Reprimand for his alleged failure to comply with Rule while working on Track 1901 on the 19 lead on the Mykawa Subdivision on March 19, 2013.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated, if applicable, with seniority, vacation, all rights unimpaired and wage loss commencing April 12, 2013, and continuing forward and/or 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, M.D. Cameron, has been employed by the Carrier since 2004. On March 22, 2013, the Carrier notified Claimant to attend an investigation to ascertain the facts and determine his responsibility, if any, in connection with his alleged failure to comply with Maintenance of Way Operating Rule (MOWOR) 6.3.2, Protection On Other than Main Track, while working on Track 1901 on the 19 lead on the Mykawa Subdivision on March 19, 2013. Following the investigation, the Carrier determined that

Claimant had committed the violations alleged and assessed him a Standard Formal Reprimand.

MOWOR 6.3.2, Protection on Other than Main Track, provides, in relevant part:

To establish protection on a track other than main track, controlled siding or any track where CTC is in effect, use one or a combination of the following:

- All switches that provide direct access to the track must be:
 - Lined against movement
 - Properly tagged
 - Effectively spiked, clamped or locked with an effective locking device.
- * * *
- Establish working limits on main track or controlled siding to prevent movement to other than main tracks.

Patrick McAleese, Carrier Roadmaster at Allen, Texas, testified at the investigation that he was responsible for track maintenance on the Galveston Subdivision between Milepost 0.0 and 127.8, and the Mykawa Subdivision between Milepost 0.0 and 19.4. He explained that he learned of the incident when he received a call from an FRA inspector, informing him that the employees working on the 19-lead, Claimant, a truck driver, and Foreman Lee Drones, did not have proper protection.

The inspector wrote an exception report, which was entered into the investigation record. It noted:

Improper control of entry to inaccessible track. BNSF track gang (TMGX 1459) was installing an I-Bond on the 19 lead. Track gang had T/T on the mainline but failed to ensure proper protection on the 19 lead (non-controlled track).

Mr. McAleese testified that failure to protect oneself on other than main track is a critical decision. He acknowledged that he had no firsthand knowledge of the incident.

Lee Drones, Jr. testified at the investigation that he was the Foreman on Gang TMGX 1459 at the time of the incident. He stated that the location where he and Claimant were working required him to have time and track authority for the main, and they were replacing an I-Bond right off the Main #2 lead. He explained that the 19-Lead came off the main track, and there were cars on the stub tracks, which he referred to as standing equipment.

Mr. Drones maintained that the protection on the 19-lead was that he and Claimant had checked the brakes on cars that were in the stub tracks, and they were locked. The cars were not on the 19-lead, he explained, but rather on the stub tracks that came off the 19-lead. He stated that there were multiple stub tracks, perhaps five or six.

coming off the 19-lead. He added that this type of track is referred to as an inaccessible track. He acknowledged that any of the cars on the stub tracks could have rolled onto the 19-lead and gotten to their work location, but they checked the tracks where they saw cars and made sure the handbrakes were set. Mr. Drones admitted that if the handbrakes had failed there was no protection between where they were working, replacing the I-Bond, and those cars.

Mr. Drones stated that there were multiple switches from the stub tracks onto the 19-lead that the cars could have come through, but only one entrance to the 19-lead off the main, where they had authority. He added that the authority covered the switch that was the access point from the main, so there was no way any trains or engines could get to the employees.

Mr. Drones acknowledged that all switches which provided direct access to the track were not properly tagged against movement. He maintained that they were effectively spiked, clamped or locked with an effective locking device. There was no red flag or light, or derail capable of restricting access to the track. He stated that they had establishing working limits on the main track or controlled siding to prevent movement to the other than main tracks. He maintained that their track and time prevented movement to the track they were working on. However, he acknowledged that the authority only provided protection from the main track but claimed there was protection where he was changing out the insulated joint. He stated that he had set their locks with the derails in front and the switch behind them on the lead. The P. 27 switch was not locked because they had checked the cars and that track was empty, as was the next track, Claimant had checked the brakes, that switch was also a facing point switch as they walked up to the lead, did not have derail on it.

Claimant testified at the investigation that at the time of the incident he and Mr. Drones had track and time authority on the main, and believed they were properly protected on the 19-lead. He acknowledged that an FRA inspector had approached them while they were working, at Milepost 18.9. He confirmed that they had protection on the switch which was the only access point for trains and engines to the 19-lead. He added that there were no trains, engines or standing equipment on the 19-lead, and the only standing equipment was on the stub tracks, cars with no engine or power. He stated that the first switch with any cars on it was approximately one-quarter mile from where they were working.

Claimant's personal record shows a Level S Record Suspension, with a 36-month review period, for being foul of a live track with no form of authority or protection.

The Carrier asserts that this case is not complicated, as Roadmaster McAleese testified that the FRA inspector notified him that he took exception to Claimant's protection on March 19, 2013. Indeed, the Carrier states, Roadmaster McAleese was specific concerning Claimant's violation, as his failure to ensure proper protection for himself and his co-worker on the 19 lead was a critical decision failure.

The Carrier also points to the testimony of Claimant's co-worker, Mr. Drones, who, although he testified that he had checked handbrakes on the cars that could have rolled into the area where he and Claimant were working, acknowledged that if the handbrakes failed the cars would have rolled into them. The Carrier notes that Mr. Drones also acknowledged that the track they were on was accessible.

The transcript conclusively establishes, the Carrier argues, that Claimant and his co-worker were not properly protected, notwithstanding the Organization's many excuses to exonerate Claimant. The Carrier notes that where, as in this case, there is conflicting testimony, it is the responsibility of the Hearing Officer, not this Board, to make credibility determinations.

The Carrier concludes that it has met its burden of proving Claimant's guilt by substantial evidence, and the penalty assessed was quite lenient, given the Carrier's Policy for Employee Performance Accountability (PEPA), with consideration for Claimant's personal record. The Carrier urges that the claim be denied.

The Organization asserts that there is no evidence that Claimant violated any Rules. The Carrier, the Organization states, relied upon an inspection report which claimed there was improper control of entry to an inaccessible track, but also stated that Claimant's gang had time and track authority on the mainline but failed to ensure proper protection on the 19 lead.

The inspector, the Organization contends, is mistaken as to how protection may be established. So long as there is mainline protection that covers the switch to an inaccessible track, meaning a track with only one entry point, nothing else needs to be done. The Organization notes that Claimant verified there were no engine or trains on the track on which they were working, and they established mainline protection that covered the switch, the only entry point, through their track and time authority. The Organization maintains that there was no need to establish any further protection.

Moreover, the Organization notes, Claimant was charged with violation of MOWOR 6.3.2 Protection on Other than Main Track, which provides that an employee "may use one or a combination of the following," including, "Establish working limits on main track or controlled siding to prevent movement to other than main track." The Organization contends that this is exactly what the track and time authority provided, as the employees could not establish working limits without that authority, and working limits are not required if there is only one group working inside the track authority. The Carrier's own Rules Trainers, the Organization adds, state that Claimant did not violate this Rule.


The Organization concludes that the Carrier never looked at the actual incident, and based its decision to discipline Claimant upon the FRA inspector's word that there was a violation. The Organization urges that the Carrier has failed to meet its burden of proof, and, even if it had, the penalty is excessive and the claim should be sustained.

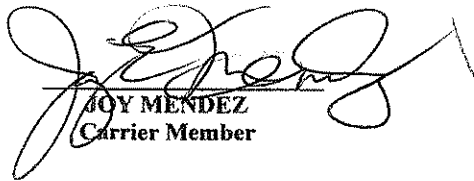
We have carefully reviewed the record in its entirety. First, we find no procedural error which denied Claimant his right to a fair and impartial investigation. On the merits, we find that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. The FRA inspector found, as Claimant and his Foreman testified, that they had proper time and track protection from the main track to the 19-lead where they were working. However, contrary to the Organization's argument, that was not the only protection necessary. As the FRA report indicated, they did not have proper control of the stub, or inaccessible tracks, coming off the 19 lead, several of which had cars on them and multiple switches leading to the track where they were working. While the employees maintained that Claimant had checked the brakes on the cars located in some of those tracks, Foreman Drones acknowledged that there was no protection on the switches from the stub tracks to the 19 lead and the cars could have rolled onto them. Claimant did not take sufficient precautions to ensure his safety and the Carrier has met its burden of proving his guilt by substantial evidence.

With respect to the penalty, Claimant committed a serious violation, and he and his co-worker put themselves in unnecessary danger. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

Claim denied.


DAN NIELSEN
Neutral Member


JOY MENDEZ
Carrier Member


DAVID SCOVILLE
Organization Member

Dated this 31st day of October, 2014.