

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 488 – Award No. 488 – Rasinskis
Carrier File No. 10-15-0175
Organization File No. 10-SF13N1-14149.CM

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing December 16, 2014 when Claimant, Steven H. Rasinskis (0291997), was dismissed for his failure to properly protect employees and equipment on Main 2, between Milepost 7 and 15, using Form B #1896 when he failed to notify all employees and workgroups prior to clearing Train #BNSF 7804, through his limits at approximately 11:05am on November 6, 2014 while working as a Sectionman on the Chillicothe Subdivision. The Carrier alleged violation of Maintenance of Way Operating Rule (MWOR) 15.2 Protection by Track Bulletin Form B and MWOR 12.4 Work is at Multiple Locations over an Extended Distance.

2. As a consequence of the violation referred to in part 1 the Carrier shall remove from Claimant's record this dismissal and he be reinstated, if applicable, with seniority, vacation, all rights unimpaired and pay for all wage loss, commencing December 16, 2014 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, Steven H. Rasinskis, had been employed by the Carrier since May, 2014. On November 10, 2014, the Carrier charged Claimant to attend an investigation to ascertain the facts and determine Claimant's responsibility, if any, in connection with his alleged failure to properly protect employees and equipment when he failed to clear train(s) and notify all workgroups that were being protected by the Form B at approximately 1105 at approximately 1105 on 11/6/2014, working as Sectionman on gang TSEC 1385, on the Chillicothe Subdivision. Following the investigation, the Carrier found Claimant guilty of the misconduct alleged, in violation of MWOR 15.2 Protection by Track Bulletin Form B and MWOR 12.4 Work is at Multiple Locations over an Extended Distance, and dismissed him from service.

The facts of this case are largely undisputed. At the time of the incident, Claimant was working as a gang Sectionman on the Chillicothe subdivision. He was the employee in charge of a Form B between Milepost 7 and Milepost 15. He had three workgroups, including Signal Maintainers, under the protection of that Form B.

Claimant acknowledged at the investigation, that the incident began when, having notified all of the work groups working under his Form B, he talked a train through his limits. Shortly thereafter, he talked another train through the limits, without first notifying any of the employees. A Signal Maintainer had to call Claimant to stop the train.

Claimant testified that he believed the employees would stay clear of the tracks until he told them they could resume work. He admitted that he did not conduct a job briefing before sending the employees to work on the track. He stated that the first train traveled on Track 1, and the second on Track 2, which was where the Signal employees were working. He explained that he believed they were on Track 1.

The record indicates that earlier that day Claimant told Roadmaster Hector Analis, who assigned Claimant to run the Form B, that Claimant told him he did not feel comfortable running Forms Bs, and he did not want to get into trouble again because he already had a similar violation on this record. Mr. Analis testified at the investigation that he asked Claimant about his concerns, and he replied that he felt uncomfortable with the busy location, and they talked about the locations of the flags, because Claimant told him there were so many they had to put up.

Mr. Alanis stated that Claimant had worked as a Sectionman in that area so he would be in a position to run the Form B. He did not have anyone available to help him with the actual running of the Form B. He told Claimant he would have someone help with placing the flags, which seemed to be Claimant's primary concern.

Track Inspector Shawn Miller testified at the investigation that Claimant had expressed concerns about working in the area. They were addressed in proper way, and Claimant just had to learn to take care of them. Claimant never told him he did not feel completely safe, or did not want to endanger anyone. Mr. Miller stated that perhaps it would have been desirable to provide more assistance with communications, but there

was no one out there to do it, and management had walked through the entire process with Claimant.

Mr. Miller testified that he believed management had addressed Claimant's concerns, and Claimant was empowered, under Carrier policy, to voice feelings about his fears concerning the flags, but that was not where the violation occurred. Rather, it was that he failed to confirm that employees were clear of the track before allowing the train to proceed through his limits.

Claimant testified at the investigation that he felt unprepared to do this job. He had learned the evening before that he would be running this Form B, and he had not run them with multiple work groups before. He explained that it was a very busy area, with radio issues. He did not know the territory very well. He maintained that he had not been given a time or a meeting place for a job briefing with the employees working under his protection. He stated that the employees called him, asking to be put on his list, and he would write it down. He added that the Signal Maintainers did not tell him where they would be working.

Claimant acknowledged that when he expressed his concerns to Roadmaster Alanis, he sat down and explained, on the track chart, where they were and how the Form B would operate that day. He acknowledged that Mr. Alanis got him help with placing the flags.

Claimant's personal record shows a formal reprimand, with a 12-month review period, for an incident on October 7, 2016 where he failed to properly protect employees and equipment using his vehicle when he set out outside his authority limits, and a Level S Record suspension, with a 36-month review period, for failure to comply with the Carrier's electronic device policy when he was recorded by Drivecam talking on his cell phone in other than hands free mode.

The Carrier asserts that that Claimant's violation is clear. While he attempted to argue that he was insufficiently familiar with the area and the proper placement of the flags, the violation here was that he cleared a train through his limits without ensuring that the Signal workgroup employees were clear of the track. Claimant admitted his violation. This admission, as is well-recognized, is sufficient for the Carrier to meet its burden of proving Claimant's guilt by substantial evidence. Whatever concerns he had about the flags, the Carrier stresses, are irrelevant.

As for the penalty, Claimant committed a serious violation which could have put lives at risk. He was a very short-term employee and this was his third such violation. Dismissal of an employee who put other employees' lives at risk cannot be deemed unfair, arbitrary or capricious.

The Organization raises procedural and substantive objections to the discipline assessed against Claimant. In particular, the Organization argues that Claimant had worked only three weeks in the Corwith area where this incident took place, and had only

five months' overall service to the Carrier. He was placed in a situation which would test a seasoned employee because of the complexity of the track structure and concentration of train traffic in the area.

The Organization urges that the Carrier failed to prove that Claimant engaged in any misconduct. Even if it had, the penalty of dismissal is extreme, unwarranted and unjustified.

We have carefully reviewed the record in its entirety. First, we find no procedural error which deprived Claimant of his right to a fair and impartial investigation. While Claimant and the Organization argue that Claimant was not sufficiently experienced to handle the type of Form B he was assigned on this occasion, the fact is that he committed basic, critical mistakes which would be obvious even to someone who did not work in the railroad industry. He conducted no job briefing with the work groups that would be working under his protection. He had no clear idea of where they were on the track. In particular, he did not know whether the Signal employees were working on Track 1 or Track 2. Most critically, he cleared a train through his limits without notifying the employees on the track that he was doing so, to the point that they had to call and have him stop the train coming at them. There is no validity to his excuse that he simply assumed, having cleared a previous train, that they would not return to work until he told them to do so.

As the Carrier argues, Claimant was a very short-term employee with similar violations already on his record. It does not appear that Claimant was capable of performing this job, even at a basic level, and his failings literally put other employees' lives at stake. The Carrier's decision to dismiss him cannot be deemed arbitrary or excessive.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



MICHELLE McBRIDE
Carrier Member



DAVID SCOVILLE
Organization Member

Dated this 21 day of August, 2017.