

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 514 – Award No. 514 – A. Carroll

Carrier File No. 14-19-0123

Organization File No. 2418-SL13N1-195

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Andrew Tallen Carroll (0137802), Seniority Date 04-04-2014 for the removal of the Claimant's Standard Formal Reprimand and 1 Year Review Period. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s).

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, A. Carroll, has been employed by the Carrier since 2012. On February 28, 2019, following an investigation, the Carrier found Claimant guilty of failure to follow Engineering Instruction (EI) 2.3.3 Items to Consider when Inspecting Track, as the failure resulted in an FRA violation after five missing frog bolts were discovered in a row at MP 1117.9 on the Stockton Subdivision on January 10, 2019. The Carrier assessed him a Standard Formal Reprimand with a one-year review period.

The facts of this case are not in dispute. At the time of the incident, Claimant was a Track Supervisor headquartered in Riverbank, California. On January 10, 2019, Claimant Roadmaster Matthew Ditzler, a Federal Railroad Administration (FRA) Inspector, and a Public Utilities

Commission Inspector were hy-railing/inspecting track. The inspectors discovered five bolts in a row broken out and missing from a frog on the main line; the bolts were lying on the ground.

The Carrier was issued a Class 1 FRA violation. Claimant took the required actions of placing a 10 mile per hour slow order on the track and contacting the local section gang to make repairs.

Mr. Ditzler explained at the investigation that Claimant was required, as a track inspector, to perform a set number of inspections, including four weekly on the main line. Claimant acknowledged at the investigation that he had hy-railed this area the day before and observed two missing bolts on the same frog. This was a non-class specific defect, which under EI 2.3.3, Claimant was required to either have repaired immediately or, if unable to do so, report in the Carrier's inspection system to start the 30-day period the FRA allows for repairs. Claimant admitted that he took no action.

Mr. Ditzler explained that during the January 10, 2019 inspection five bolts were now missing from the frog instead of only the two observed by Claimant the previous day. Several trains transverse over this location and it was possible, he stated, that the defect worsened overnight.

The Organization asserts that Claimant did what he was trained to do in this sort of situation, protect the affected area and repair. He was charged only with respect to the events of January 10, and he committed no violations that day. Whatever may have occurred the day before is not relevant to this case. The claim should be sustained.

We have carefully reviewed the record in its entirety. First, we reject the Organization's contention that the claim must be sustained because Claimant was charged only with failing to properly perform his duties on January 10, 2019, he did so that day, and whatever may have occurred the day before is irrelevant. The charge clearly states that Claimant failed to perform his duties properly, as discovered in an FRA inspection on January 10, 2019. The Organization's contention that he can only be liable for violations he committed the same day as the inspection is, frankly, nonsensical.

Claimant admitted that he discovered missing frog bolts at the relevant location and took no action to correct the defect. As is well settled, that admission is sufficient to satisfy the Carrier's burden of proof. Had he taken proper action, it might well have prevented the further deterioration that had occurred by the time of the inspection and prevented the issuance of an FRA violation. Claimant's guilt has been established by substantial evidence.

We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

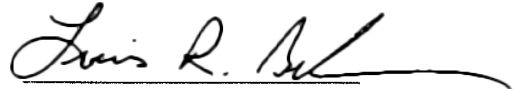
Claim denied.



DAN NIELSEN
Neutral Member



SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.