

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 524 – Award No. 524 – R. Ling
Carrier File No. 14-19-0219
Organization File No. 2417-SL13D3-191

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Roy Ling (1468255), Seniority Date 04-12-2000 for the removal of the Claimant's Disqualification. In addition, we request all record of this Disqualification 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, R. Ling, has been employed by the Carrier since 2000. On April 15, 2019, the Carrier disqualified Claimant as a Track Supervisor due to his failure to cover his assigned territory on several occasions during the preceding eight months and continued failure to meet expectations. The Organization requested a hearing on April 17, 2019; it was held on May 2, 2019.

The facts of this case are largely undisputed. Claimant testified at the hearing that on the morning of April 14, 2019, he had inspected the track section at issue and submitted a Form B for a frog that needed work. The Maintenance Desk contacted Claimant at 9:57 p.m. and notified him of a vehicle track interaction (VTI) exception—which detects vehicle and train anomalies on the track—requiring immediate inspection. Claimant did not immediately inspect the track, testifying that he “knew it had to be the frog.” He placed a blanket 10 mile per hour slow order on the affected track section and called the welding gang, who he believed could respond more quickly.

Claimant testified at the hearing that he was aware he had not followed the procedure set forth in the Engineering Instructions for handling such matters, but he protected the track before he inspected it and believed he had handled the matter appropriately. He added that at the time he was unaware of the proper procedure, although it was not clear whether he was referencing this incident or an earlier one.

Kingman, Arizona Roadmaster Mike Espey testified at the hearing that his supervisor called him at approximately 10:00 p.m. to ask about the speed restriction. Mr. Espey then called Claimant, who explained there was a VTI call. Mr. Espey asked Claimant if he had gone out and inspected the track, to which Claimant replied that he had not. Mr. Espey then instructed Claimant to make an immediate inspection according to Engineering Instruction (EI) 5.5.6.3, but Claimant did not go to the site until the following morning, nor did he notify Mr. Espey or any other Track Supervisor that he would not be going there. When the welders arrived at the site of the issue approximately two to two and a half hours after Claimant was notified of the VTI, they found that it was caused by a blown-up frog. However, Mr. Espey explained, a VTI exception requires an immediate physical inspection of the track as well as 260 feet of track on either side, because until the cause of the exception is known, the proper form of protection cannot be determined. In this case, the defect could have been a broken rail which would have required that either the track be taken out of service or all trains be physically walked over the defect. Instead of performing his duties as required, Mr. Espey added, Claimant simply placed a 10 mph slow order on the track, then called a welding gang to inspect the track to determine what had caused the VTI exception, rather than doing so himself.

Mr. Espey had been Claimant's supervisor for about eight months prior to this incident; shortly after he arrived, on September 11, 2018, Claimant received a coach and counseling letter from his previous supervisor, Jesse Bower, regarding his failure to comply with instructions during flash floods and other unexpected situations. Claimant refused to sign the letter. Mr. Espey also stated that he repeatedly spoke to Claimant about his expectations for the manner in which the Track Supervisor job should be performed, including properly responding to calls after being released from duty. Claimant maintained at the hearing that he had no obligation to deal with calls after the end of his shift. On March 13, 2019, Claimant received a Formal Reprimand with a one-year review period for failing to comply with his Roadmaster's instructions and failing to respond to a service interruption call.

Claimant also previously received a Level-S 30-day Record Suspension with a one-year review period on August 19, 2010, for failing to follow instructions about taking a Company vehicle home. On January 21, 2015, Claimant received a Level-S 30-day Record Suspension with a three-year review period for failing to be alert and attentive while occupying the main track without proper authority and failing to activate the HLCS system.

The Organization argues that Claimant has been unjustly disqualified from his position as Track Supervisor. The Organization states that Claimant worked as a Track Supervisor for 12 years without incident or any discipline and only had issues during the eight months Mr. Espey was his Roadmaster. Even if he did commit a Rules violation here, that should not result in forfeiture of years of seniority as a Track Supervisor. The Organization questions who decided to

treat the instant offense as disqualifying and states that it is insufficient to answer, as the Carrier did, that it was a decision between Mr. Espey and Division Engineer Sheri Ellis.

The Organization stresses with respect to the incident at issue that Claimant immediately issued a slow order and called the welders so that they could repair the track issue. The Carrier has failed to present any evidence of numerous conversations or other problems with Claimant about failing to properly cover his territory. For those reasons, the disqualification should be reversed.

The Carrier contends that the Organization has failed to meet its burden of proof. The Carrier points to Appendix No. 23 of the South Agreement, stating that Track Supervisors do not have assigned hours due to the nature of their duties, to illustrate that the fact that Claimant was called after his typical work hours does not absolve him of performing his job duties. Further, this was at least the third instance of Claimant not adhering to his responsibilities. Claimant was coached and counseled by his previous Roadmaster on September 11, 2018, regarding his failure to cover his assigned territory during unexpected situations, and then failed to respond to a service interruption call on December 27, 2018, for which he received a Formal Reprimand with one-year review period.

The Carrier stresses that notwithstanding his experience as a Track Supervisor for a number of years, Claimant demonstrated, in the time leading up to the instant disqualification, a history of inability to perform the duties of a Track Supervisor. The Carrier stresses that on September 11, 2018, Roadmaster Jesse Bower coached and counseled Claimant regarding his failure to cover his assigned territory during flash floods and other unexpected situations on multiple occasions, repeating the Carrier's expectations regarding the duties and responsibilities of monthly-rated Track Supervisors, which Claimant refused to sign because he disagreed with it. Three months later, Claimant failed to respond to a service interruption call, leading to a formal reprimand. Just a few months after that, here Claimant once again failed to perform the critical duty of a Track Supervisor by refusing to immediately inspect a VTI as required by Carrier rules. Claimant clearly demonstrated his unwillingness and inability to correctly perform the critical duties of a Track Supervisor. The Carrier stresses that it has a responsibility to protect the safety of its workers and the public by ensuring track is safe for train movement. A crucial element to accomplishing this are the employees, like Track Supervisors, who are tasked with inspecting track. When that employee fails to respond to calls, he puts employees and the public at serious risk. The claim should be denied.


We have carefully reviewed the record in its entirety, and find that the Organization has failed to meet its burden of proof. Over the course of at least a year, through the tenure of two Roadmasters, Claimant failed to perform his important duties in accordance with Carrier rules and his supervisors' instructions, substituting his beliefs as to how his job should be performed for his employer's. Indeed, with respect to the latest incident, Claimant admitted that he did what he "felt was appropriate", but not what the Engineering Instructions clearly required. The Organization's attempt to paint the situation as a dispute between Claimant and Mr. Espey is unavailing, as demonstrated by the coach and counseling letter issued by his previous supervisor, which Claimant refused to accept. It is equally clear that Claimant was not disqualified for this one incident, as the

Organization argues, as he also had a formal reprimand and Mr. Espey testified that he had repeated conversations with Claimant about proper performance of his duties.

Claimant was on clear notice that the manner in which he performed his duties was not acceptable, but his testimony at the investigation demonstrated that he did not believe he should be required to do so other than according to his judgment, rather than the Carrier's. Claimant occupied a position of serious responsibility and the Carrier, on this record, was well within its rights to determine that he posed an unacceptable risk to its operations and was not qualified to continue in this position. The claim will therefore be denied.

AWARD

Claim denied.


DAN NIELSEN
Neutral Member


LOGAN McKENNA
Carrier Member


JEFFERY L. FRY
Organization Member

Dated this 16 day of May, 2023.