

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 553 – Award No. 553 – J. Ray
Carrier File No. 14-20-0154
Organization File No. 2417-SL13D3-202

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of John Luis Ray (6594931), Seniority Date 06-08-1996 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, J. Ray, has been employed by the Carrier since 1996. On February 14, 2020, the Carrier disqualified Claimant as a Foreman due to failure to perform job duties, such as communicating with his supervisor on important job related tasks and procedures, holding satisfactory job safety briefings, and maintaining proper housekeeping on vehicles. The Organization requested a hearing the same day; it was held on March 5, 2020. On April 1, 2020, the Carrier upheld the disqualification.

At the relevant time, Claimant was assigned as the foreman on gang TSCX HQ, under the supervision of Gallup Subdivision Roadmaster Mark Roybal. Mr. Roybal testified at the investigation concerning issues with Claimant's performance.

Mr. Roybal entered into the investigation record a printed document listing the expectations for the surfacing gang and foreman positions. It provided that the gang must perform daily

maintenance of machines, and that the foreman must monitor the employees' performance of their duties, submit time reporting on a daily basis, place TCMs properly, and communicate any issues or problems to the Roadmaster. Mr. Roybal also entered into the hearing record a document showing that he conducted a 2019 Annual Safety Discussion with Claimant, discussing his expectations for his position.

Mr. Roybal stated that his expectations for everyone on his team are to make sure they escalate to him any issues with track and time, especially if there is going to be an overstay of authority, so that trains can be properly managed on the territory. He explained that on February 5, 2020, Claimant overstayed his authority by more than an hour without notifying him. Mr. Roybal discussed the matter with him following the incident. However, Claimant had another overstay, of approximately 45 minutes, on February 12, 2020. Mr. Roybal was actually at the location that day, but received a call from someone else inquiring about the problem. Mr. Roybal went to Claimant and asked him what was going on. Claimant, Mr. Roybal stated, admitted that he was in overstay. Mr. Roybal added that when he asked Claimant why he had not contacted him, he failed to answer and said that he was busy. Mr. Roybal acknowledged that Claimant had notified the dispatcher of the need to overstay.

Mr. Roybal added that another expectation is proper placement of the TCM, an order which states that a track is out of service. Claimant, he stated, would regularly fail to put a track back in service when he left it, and he or the Track Supervisor would have to do it instead.

Mr. Roybal explained that he also had issues with Claimant's maintenance of his truck. As far back as June 2019, the truck was a mess, with oil in the back, which posed a safety risk. He briefed with Claimant and the entire team about the necessity of making sure the vehicles are clean at the end of day. However, he added, on February 12, 2020, he again observed Claimant's truck in "mess" condition. The back of the truck was full of trash and the diesel hoses were strung out and looked like they had been leaking, which again posed a safety hazard. Mr. Roybal stated that he again briefed with the entire team concerning safety expectations.

Mr. Roybal further testified that he went back to October 2019 and noted multiple instances where Claimant had not done his reporting on time, sometimes going three to four days without entering time. The instances continued through his last day as Foreman, when he did not enter his time at all. The expectation is that it be entered daily, and if for some reason that cannot be done the foreman should notify the Roadmaster, and, Mr. Roybal stated, he briefed Claimant about this multiple times, but Claimant only put in his own time on the day worked.

Claimant testified at the investigation that he had never seen written expectations for his position, but Mr. Roybal did verbally go over them with him. He acknowledged that if there was going to be an overstay he needed to escalate it. With respect to the two overstays discussed during the investigation, he stated that he did not feel he had to communicate with Mr. Roybal because he was in contact with the dispatcher.

With respect to the housekeeping issues, he acknowledged that there were, on February 12, 2020, coffee cups and oil in the back of the truck. There was also the fuel hose, but the truck had

just been fueled so the hose was just thrown in the back of the truck. He stated that several people traveled in the vehicle so he did not know how spotless it could be every day.

With respect to time reporting, Claimant acknowledged late submissions approximately two-thirds of the time. He stated that if another employee on his gang was detached he could not accurately report the time until the next day.

Claimant acknowledged that Mr. Roybal had discussed the condition of the truck with himself and the other employees on the truck. He never explained the overstay to Mr. Roybal.

Claimant's personal record showed no recent discipline.

The Organization first points out that Claimant had been a Track Foreman for more than 20 years, and worked for 10 different Roadmasters without incident. The Organization states that whatever alleged offenses are at issue here should have been addressed as Rules violations rather than disqualification.

The Organization states that Claimant immediately contacted the dispatcher when he was going to have an overstay, as he was trained to do. The Organization notes that an overstay on track and time is a safety overlay intended to protect men and equipment. It follows Carrier Rules. As for the supposedly greasy hoses in the back of a truck, which violated Mr. Roybal's housekeeping expectations, the Organization asserts that this was the truck driver's responsibility, not Claimant's. Further, with respect to late submission of time reports, Claimant testified that this was because of some gang members working detached service on other gangs and Claimant would not immediately know their hours worked.

The Organization urges that there was no basis for the Carrier's action, and that the unjust and unwarranted disqualification be overturned.

The Carrier first notes that Claimant began working as a foreman in 2004 and held various positions throughout his career with the Carrier, until he was assigned to a gang under Mr. Roybal's supervision on March 11, 2019. The Carrier points out that Mr. Roybal made his expectations for Claimant's performance with respect to housekeeping of Carrier vehicles, inputting the gang's time and instructing him to notify Mr. Roybal of any track and time overstay, clear during a review on March 20, 2019.

Nevertheless, the Carrier states, Claimant failed to notify Mr. Roybal of overstay on February 5 and 12, 2020, exceeding his authority by over an hour; failed to maintain his truck in a safe condition on June 11, 2019 and February 12, 2020, and failed to timely submit time on numerous occasions between October 16, 2019 and February 9, 2020. The Carrier notes that Mr. Roybal discussed these matters, and his expectations, with Claimant on multiple occasions.

However, the Carrier asserts, Claimant continued to fail to meet expectations for his position. He so admitted at the hearing. The record fully justifies the Carrier's decision, notwithstanding Claimant's long tenure as a foreman, and the claim should be denied.

We have carefully reviewed the record in its entirety. We note that Claimant has more than 20 years' seniority as a foreman, working under different roadmasters, and has not previously been disqualified. However, Mr. Roybal had strict expectations for his foreman's performance, and it is clear that those expectations were, repeatedly, communicated to Claimant. Claimant was aware that Mr. Roybal wanted to be contacted personally in the event of an overstay, but Claimant refused to do that. He left the truck in dirty, and unsafe, condition. He repeatedly failed to submit his time reports as required, and he did not communicate any problems obtaining other employees' time to Mr. Roybal. Mr. Roybal wanted Claimant to keep him abreast of any problems, and Claimant did not do so. Mr. Roybal's expectations were not unreasonable, nor that difficult to adhere to. Indeed, Claimant never maintained that this was the case.

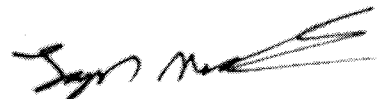
Mr. Roybal had the right to expect his Foreman to perform in accordance with his instructions and Claimant, for insufficiently explained reasons, did not. Under such circumstances, we cannot say that the decision to disqualify Claimant, which lies within the Carrier's discretion, was unjust.

AWARD

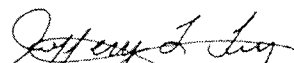
Claim denied.



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



JEFFERY L. FRY
Organization Member

Dated this 26th day of March, 2025.