

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 141, (Case No. 141)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

**vs**

**BNSF RAILWAY COMPANY**

**William R. Miller, Chairman & Neutral Member  
Joy E. Mendez, Carrier Member  
David D. Tanner, Employee Member**

**STATEMENT OF CLAIM:**

**"Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing April 12, 2013, when Claimant, Lee E. Drones (1754233), was disciplined with a Standard Formal Reprimand for his alleged failure to comply with Rules while working on Track 1901 on the 19 Lead on the Mykawa Subdivision on March 19, 2013. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 6.3.2 Protection on Other Than Main Track.**
- 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 pay for all wage loss commencing April 12, 2013, continuing forward and/or otherwise made whole."  
(Carrier File No. 14-13-0249) (Organization File No. 100-SF13N1-1326)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On March 22, 2013, Claimant was directed to attend a formal Investigation on April 11, 2013, which was mutually postponed until April 12, 2013, concerning in pertinent part the following charge:

**"for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to comply with Maintenance Of Way Operating Rule 6.3.2, Protection On Other Than Main Track while working on Track 1901 on the 19 lead at Mile Post 18.9 on the Mykawa Sub-division at approximately 1140 hours on March 19, 2013...."**

On May 2, 2013, Claimant was notified that he had been found guilty as charged and was assessed a Standard Formal Reprimand.

It is the Organization's position that the record shows that the Carrier did not meet its burden of proof as there was no evidence that the Claimant was in violation of the Rules charged. It asserted Exhibit 3 an Inspection Report attached to the transcript claims there was an improper control of the entry to an inaccessible track, but went on state the Gang had Track and Time Authority on the mainline, but failed to ensure proper protection on the 19 Lead. It argued that FRA Inspector was mistaken on how protection can be established and that as long as there is mainline protection that covers the switch to an inaccessible track, nothing else needs to be done (inaccessible defined as being only one entry point). It further argued that the Claimant verified there were no engines or trains on the track on which they were working and the crew had established mainline protection that covered the switch and its singular entry point with their Track and Time Authority, thus no other form of protection was needed. Additionally, it suggested that the Carrier alleged that the Claimant violated Rule 6.3.2 which states in the last bullet the following: **"Establish working limits on main track or controlled siding to prevent movement to other than main tracks."** According to the Organization that is exactly what the Claimant's Track and Time Authority accomplished. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the transcript verifies that Roadmaster P. McAleese testified the FRA Inspector contacted him and explained he took exception with the Claimant's protection while he was working on March 19, 2013. Mr. McAleese stated that Claimant failed to ensure proper protection on the 19 Lead (non-controlled track) which was a critical decision failure. Furthermore, it stated that the Claimant testified that he had checked the handbrakes on the cars that could have rolled into where the employees were working and, he also testified that if the handbrakes had failed the cars could have rolled into the Claimant and his co-worker. It argued there can be no doubt that the Claimant and his co-worker were not properly protected and the subsequent discipline was appropriate. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and determined that the Investigation and appeal process met the guidelines of Rule 13(a) the Discipline Rule and Appendix No. 11.

The FRA Inspection Report specifically described the March 19, 2013, alleged violation as follows:

**"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)."**

The Claimant testified on page 11 of the transcript there was only Standing Equipment (rail cars with no engines or power) on the 19-Lead and the brakes on all of the cars that were in the stub tracks were locked and on page 13 of the transcript the Claimant further testified that if the handbrakes failed on those cars he and his co-worker could have been at risk, however, on page 24 of the transcript the Claimant was questioned about any other protective measures he took as follows:

**"David Mooney: The switches that provide access to the tracks that you were working, were they effectively spiked, clamped or locked with an effective locking device.**

**Lee E. Drones: Yes."**

On page 26 of the transcript the questioning of the Claimant continued as follows:

**"David Mooney: Okay, so, so you were working on the other than main track, what type of protection did you have on other than main track?**

**Lee E. Drones: I also set our locks.**

**David Mooney: You had locks?**

**Lee E. Drones: Right.**

**David Mooney: Okay. And what was locked?**

**Lee E. Drones: Um, they had derails, um, derail up in front and I'm thinking the switch behind us. So the switch.**

**David Mooney: What switch? The first switch in the lead was locked?**

**Lee E. Drones: Right. (Underlining Board's emphasis)**

On pages 28 and 29 of the transcript the Claimant further testified there was a permanent derail on the 19-Lead coming off the main track about 200 feet from his work location that he had locked before starting work and that derail would have derailed any cars coming towards the main track.

On page 32 of the transcript the Organization entered a statement from the Carrier's Manager of Field Training, Mr. Robert W. May who wrote the following:

**"The MWOR does not address 'standing equipment'. The FRA Part 214 Manual says that we must protect against train entering our working limits. In our training we tell employees that we are not required to protect against standing equipment within our working limits.**  
*(Underlining Board's emphasis)*

Mr. May went on to write:

**"Part 214.327 says:**

**Working limits on non-controlled shall be established by rendering the track within working limits physically inaccessible to trains at each possible point.**

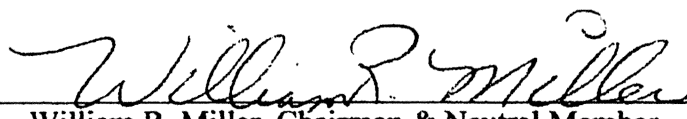
**This statement implies that we are not required to protect against standing Equipment. We are only required to protect against trains and engines."**  
*(Underlining Board's emphasis)*

The record established that no engines and/or trains were on the track or its stub-tracks that the Claimant and his co-worker was working on and only Standing Equipment was on a couple of the five or six stub-tracks and each of those cars had their respective handbrakes locked. Additionally, the record shows that the permanent derail on the 19-Lead coming off the main track had been locked with an effective locking device that was consistent with the directives of Rule 6.3.2. That evidence coupled with Carrier Manager of Field Training, Robert W. May's statement substantiated that the Claimant had been trained that he was not required to protect against Standing Equipment within his working limits in the same manner as he would against "live equipment". The Board is persuaded that on March 19, 2013, the Claimant was working as he had been trained, therefore, it is determined the Carrier did not meet its burden of proof that the Claimant was guilty as charged.

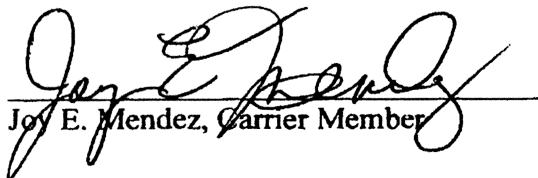
The Board finds and holds that the discipline is rescinded and removed from the Claimant's disciplinary record and the claim is sustained as presented. Claimant is returned to his prior disciplinary status in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA).

**AWARD**

Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.



William R. Miller, Chairman & Neutral Member



Joy E. Mendez, Carrier Member



David D. Tanner, Employee Member

Award Date: July 10, 2014