

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 387, (Case No. 387)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION – IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Michelle McBride, Carrier Member
Jeffery L. Fry, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing September 1, 2021, when Claimant Raymond P. Avila (1653682) was assessed a Level S 30 Day Record Suspension with a One Year Review Period for failure to inspect track to ensure that work was performed properly in the Mobest Yard between June 28, 2021 and July 16, 2021, resulting in a derailment on switch 405W on July 20, 2021, while working as a Track Supervisor in violation of EI 2.5.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing September 1, 2021, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-21-0290) (Organization File No. 2415-SL13N1-2148)**

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.

The facts indicate Claimant was working as a Track Inspector on July 6, 2021, and on that date, Claimant inspected the 405 West Switch after work had been performed on the switch and completed by Gang TTPX0056. On July 20th, Supervisor J. Satterlund got a call about a derailment in the Mobest Yard caused by wide gauge. Records indicated that location was last inspected by Claimant and he did not note any exceptions that may have led to the derailment and because of

that Claimant was directed to attend a formal Investigation on August 4, 2021, concerning in pertinent part the following:

“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to inspect track to ensure that work was performed properly in the Mobest Yard between June 28, 2021 and July 16, 2021 resulting in a derailment on switch 405W on July 20, 2021 while working as a Track Supervisor. The date BNSF received first knowledge of this alleged violation is July 20, 2021.”

On September 1, 2021, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30 Day Record Suspension with a One Year Review Period.

It is the Organization’s position that on July 6, 2021, work was performed by replacing three of eight ties under the 405 Switch. After the work was completed Claimant and Foreman Torres from TP56 inspected the work and there were no exceptions. The Organization further stated that a formal Investigation for the same alleged infraction was called on Foreman Torres and no discipline was assessed. It argued that Roadmaster, Saterlund and Claimant testified that after the work was completed many if not hundreds of freight cars and locomotives traversed across the 405 Switch without incident as the incident did not occur until 17 days after it was inspected by Claimant and Foreman Torres, when they found no exceptions. Roadmaster, Satterlund testified that wide gauge was a contributing factor, but he had no proof that was the sole cause of the derailment or that Claimant failed to properly inspect the work done on the 405 Switch on July 6th. It closed by asserting that the Carrier did not meet its burden of proof that Claimant was guilty as charged and it requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that a review of the record shows Claimant violated EI 2.5 – Inspecting Track Repair and Renewals when Claimant failed to note the wide gauge exceptions at the derailment location. It concluded Claimant did not properly inspect the track and Claimant was guilty as charged. It asked that the discipline not be disturbed and the claim remain denied.

The Board has determined that the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11 and the Claimant was afforded his “due process” Agreement rights.

Review of the record shows that Claimant and Foreman Torres inspected the work done on the 405 Switch on July 6, 2021, and neither individual found any exceptions. That inspection was done during the period covered by the Notice of Charges and there was no showing that the inspection was inadequate or any exceptions should have been found. Subsequently, many freight cars passed over that switch during the next 17 days with no problems. The Board is not persuaded

that Claimant failed to properly inspect the subject track. It is determined the Carrier did not meet its burden of proof as there was no showing that Claimant was guilty as charged.

The Board finds and holds that the discipline assessed Claimant, in this instance, is to be removed from Claimant's Disciplinary Record and the Claim is sustained.

AWARD

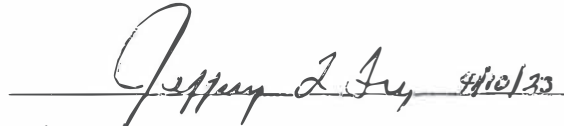
Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.

A handwritten signature in black ink, reading "William R. Miller", written over a horizontal line.

William R. Miller, Chairman & Neutral Member

A handwritten signature in blue ink, reading "Michelle D. McBride", written over a horizontal line.

Michelle McBride, Carrier Member

A handwritten signature in blue ink, reading "Jeffery L. Fry", followed by the date "4/10/23", written over a horizontal line.

Jeffery L. Fry, Employee Member

Award Date: April 10, 2023