

Public Law Board No. 7048

PARTIES) **Brotherhood of Maintenance of Way Employees Division**
) **ATSFF System Federation**
TO)
) **and**
DISPUTE:)
)
) **BNSF Railway Company**

Members of Board:

Jeanne M. Vonhof, Chairman and Neutral Member
Michelle McBride, Carrier Member
Jeffery Fry, Employee Member

Statement of Claim

We present the following claim on behalf of Yonabrin Price (0052803), seniority date April 18, 2011, for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for:

1. Straight time pay for each regular workday lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended);
2. Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service;
3. Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended;

4. Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed from service commencing September 01, 2022, continuing forward and/or otherwise made whole.

All notations of the dismissal should be removed from all Carrier records.

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 Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules, or working conditions, nor have authority to change existing agreements or to establish new rules. The Board shall have jurisdiction over the disputes assigned to this Board and such other disputes as may be added during the life of the Board by mutual assent of the parties.

The Claimant, Yonabrin Price, has worked for the Company for 13 years. He provided with notice that he was being investigated to determine his responsibility for allegedly falsifying reports regarding track inspections and other related violations. The investigation was held and, via letter dated September 1, 2022, the Claimant was dismissed. The Carrier concluded from the evidence provided at the investigation that the Claimant had falsified reports of track inspections, reporting and complying with instructions related to his assigned duties; failed to inspect tracks; and failed to comply with all rules, instructions, and policies, with regard to certain conduct on March 31, 2021. The Carrier concluded that the Claimant had violated MWOR 1.6 Conduct; MWOR 1.13 Reporting and Complying with Instructions; EI 2.3 Inspecting Track; and MSWR 1.2.5 Safety Rules, Mandates, Instructions, Training Practices and Policies.

The Claimant was assigned to inspect critical tracks in the Casey New Yard on March 31, 2021. According to his supervisor, Roadmaster Jared Hunter, GPS on the vehicle the Claimant was using that day shows him in the Casey New Yard, the area of the tracks to be inspected, from 11:43 AM until 1:21 PM. According to Hunter, video surveillance of the Claimant during that period shows him stopping his vehicle, getting out and walking the tracks near the 7109, 7105 and 7101 switches, but not throwing any switches. The video also shows that he did not inspect Turnout 7106 to 7108, according to Hunter. Claimant then drove his vehicle to the high side of the Casey New Yard and continued to drive along the lead next to the 7114 and 7116 switches, but did not leave his vehicle to inspect the tracks or switches. According to Hunter, the video shows him leaving the area of these switches about a minute later and then leaving the Casey New Yard area entirely at about 1:20 PM.

The Claimant reported and contends that he did inspect all of these switches, which are required to be inspected twice per month. At first he said during the investigation that he did the inspections at some other point on March 31, as he came in and out of the area, although he did not know at what time of day he had done so. However, even if the GPS shows the Claimant in

the Casey Yard generally, the evidence does not support that he was in the area of these switches, the Casey New Yard, at any other point in time on March 31.

The Claimant also stated that he inspected the switches at some other point in time during the month and simply recorded his inspection on March 31. He claimed that he was following the instructions of his supervisor, who allowed him to input inspections on a date other than the date they were inspected, testifying “We put in inspections and defects according to our manpower.” The Engineering Instructions require that, “The electronic inspection record must be created and saved the day of the inspection for all the inspections.” Roadmaster Hunter testified that he never gave an instruction permitting the Claimant to record an inspection on any day other than the day it was performed. The Claimant did not provide an explanation of how he kept track of inspections performed earlier in the month, and defects found, if he did not input them into the electronic records at the time; nor did he provide any documentation to support his claim that he had done so.

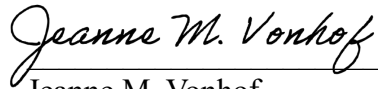
The Organization argues that the Claimant reported defects for some of these switches on March 31, and could not have done so if he had not inspected them. However, as the Carrier points out, two of the three defects he reported that day do not involve the tracks or switches for which he is being disciplined. As for the third defect, the Claimant may have reported this defect without examining the switches.

The Board concludes that there is substantial evidence that the Claimant violated the rules cited. His shifting explanations of when he performed the inspections are not convincing. There is substantial evidence that he failed to complete certain track inspections and falsified a report saying that he did so. As a Track Supervisor, the Claimant is entrusted with a high level of responsibility. By failing to inspect the tracks and switches in question, and then reporting that he had done so, the Claimant subjected his co-workers to higher risk and potential harm. As a Track Supervisor he is entrusted with a high level of autonomy, and the Carrier must be able to trust that Track Supervisors will perform their inspection duties as assigned and to report the results honestly and accurately.

There is substantial evidence that the Claimant violated MWOR 1.6 Conduct when he was not honest about his inspections and falsified inspection records. This is a dismissible offense. There is also substantial evidence that he violated MWOR 1.13 Reporting and Complying with Instructions; and MSWR 1.2.5 Safety Rules, Mandates, Instructions, Training Practices and Policies, because he failed to comply with instructions and rules to complete track inspections and to report the results accurately. These are important safety inspections, and the Carrier must be able to trust that they are done and done properly when required. The Organization has not shown that the penalty of dismissal is extreme or arbitrary for this misconduct, under these circumstances.

AWARD

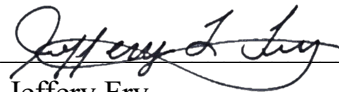
Claim denied.



Jeanne M. Vonhof
Neutral Member and Chairperson



Michelle McBride
Carrier Member



Jeffery Fry
Employee Member

Award Date: **January 8, 2025**