

BEFORE PUBLIC LAW BOARD NO. 7386

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
IBT RAIL CONFERENCE
and
SOUTH KANSAS AND OKLAHOMA RAILROAD**

Case No. 10

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s decision to dismiss Claimant N. Laney from service for alleged violation of WATCO Roadway Worker Protection Rule 11.4.3 – Inaccessible Track was entirely arbitrary, improper and unwarranted (System File 220-SKN13N1-133).
2. As a consequence of the violation referred to in Part 1 above, Claimant N. Laney shall be afforded the full remedy prescribed in Rule 15D of the Agreement.”

FINDINGS:

By notice dated March 21, 2013, the Claimant was directed to attend a formal investigation on charges that the Claimant allegedly had failed to protect himself and his crew in accordance with WATCO’s Roadway Worker Protection Rules on March 20, 2013. The investigation was conducted, as scheduled, on March 28, 2013. By letter dated April 22, 2013, the Claimant was informed that as a result of the investigation, he had been found guilty as charged, and that he was being dismissed from the Carrier’s service. The Organization subsequently filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence supports the finding that the Claimant knowingly and willfully violated the cited rules, because the Claimant was afforded all required elements of due

process, and because the discipline imposed was not arbitrary, capricious, or an abuse of managerial discretion. The Organization contends that the instant claim should be sustained in its entirety because the Claimant did not believe that his failure to place a tag on the lock violated any Carrier practice or rules because the track where he was working was lined and locked, because the track was inaccessible after the Claimant properly aligned and locked the switch, because the Carrier failed to consider the mitigating circumstances, and because the Carrier's decision to dismiss the Claimant was punitive, harsh, excessive, and inconsistent with the principles of progressive discipline.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that the Claimant violated the Carrier's rules, specifically RWP Rule 100.4.3, when he failed to properly both lock and tag the switch to make that track inaccessible on March 20, 2013. The rule states the following with respect to an inaccessible track:

Tag the switch or derail and lock, spike, and/or clamp it securely.

The Claimant admitted that although he placed a lock on the switch, it did not have the tag that was also required. The Claimant also admitted that the rules require both a lock and a tag.


Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its

actions to have been unreasonable, arbitrary, or capricious.

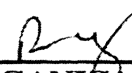
The Claimant in this case was dismissed because this was his second serious rule violation in less than thirty days. The Claimant had already received a seven-day suspension in December of 2012 and a thirty-day suspension for a Level S violation on April 11, 2013. Since the Claimant had received two Level S offenses in less than a month, the Carrier determined that dismissal was the appropriate action. This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant for the very serious rule violation in this case. This was a critical rule violation and the Carrier, therefore, had just cause to issue the termination. The claim shall be denied.

AWARD:

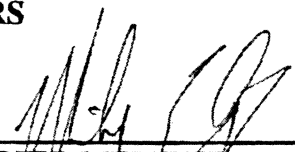
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 11-4-14



CARRIER MEMBER
DATED: 11-6-14