

Public Law Board No. 7544, 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.

Consistent with the PLB Agreement for this Board, the evidentiary record in this proceeding is comprised of the following: (A) notice of investigation, (B) transcript of investigation and all related exhibits, (C) discipline assessment letter and (D) on-property correspondence related to progression of the claim.

At the outset of the hearing, the Organization objected to the Carrier's recordation of the proceeding with the transcriptionist located at an off-site, remote location. Experience shows, BMW states, this method of transcription can result in an inaccurate and incomplete record. The Organization requested the transcriptionist be physically present to record the proceedings. CP denied the request stating an off-site transcriptionist is often used for these proceedings. The Board finds the transcript of the proceeding complete and accurate which is sufficient for this tribunal's use in rendering a decision. The Board also finds that the incident date of January 16, 2017, in the notice of formal investigation is a typographical error; the correct date is January 17, 2017. This typographical error did not affect the Organization's and Claimant's presentation of a defense to the charged rules violations.

On January 17, 2017, Claimant was a distribution crew foreman with an assignment to pick up scrap rail ties on the Carrier's main line two (CP 2) in the Bensenville Yard. As he was unfamiliar with the territory and train movements within the Yard, Claimant requested assistance through his supervisor for train movements and track protection. Supervisor Anderson contacted Roadmaster LeDuc; the Roadmaster assigned Foreman Martinez to assist Claimant. During Claimant's twenty-six (26) years of service with the Carrier performing Maintenance-of-Way work from the Canadian border in North Dakota and Minnesota toward Bensenville Yard, he has incurred no track protection rules violations and no CP official has instructed him that Maintenance-of-Way employees are not authorized to foul a track based on signal indicators. All movements by Claimant were directed by the B-17 tower operator on track under her control. There is no dispute that Claimant had proper protection with a Form B for performing work on CP 2.

The issue is whether there is substantial evidence supporting the Carrier's decision that Claimant did not have proper track protection on January 17, 2017, when he entered a manual interlock, based on a signal indicator, and fouled a controlled track (metra one, metra two) beyond absolute signals without blocks set up. CP states that proper protection would have been "9.5.3" verbal or written permission, track and time beyond metra main, Form B or services of a conductor pilot. CP states that red signal indicators stop trains but provide no protection for employees.

The Organization states that Claimant received proper protection to proceed beyond the absolute signal based on the B-17 tower operator instruction for Claimant to enter the manual interlock on signal indicators with shunting equipment (road rail and attached cars). Once Claimant received the green signal to enter, the tower operator placed red stops at the eastward and westward signal blocks to restrict trains from entering for Claimant's protection. The Organization notes that Claimant's track protection west of the B-17 interlock was absolute signal that stopped. The absolute signal provided the track authority in On Track Safety for Controlled Track, 9.5.3 ("absolute signals at stop"). Claimant is rules qualified (GCOR 9.0, Block System Rules); the Roadmaster acknowledged there is no specific rule prohibiting Maintenance-of-Way employees from operating on signal indicators.

Notwithstanding the green signal, the Carrier states that signal indication is not track protection for Maintenance-of-Way employees because they are not qualified on operating rules for signal tests. Proper protection would have been track and time or Form B. CP states that Claimant could have

challenged and refused the tower operator's instruction to proceed as violating on-track safety procedure or rule. Since Claimant did not challenge the tower operator's instruction and violated on-track safety procedures or rule by not having proper track protection to proceed, Claimant violated the following rules:

OTS 29.2 - Roadway Worker (Employees)

4. Each employee has the right to challenge, in good faith, any instruction to violate an on-track safety procedure or rule. They shall inform the Employee in Charge that the necessary on track safety provisions to be used at the job location do not comply with the Rules. They shall remain clear of the track until the conflict is resolved. Conflict resolution procedures are found in OTS Rule 31.0 (Right to Challenge On Track Safety).
5. Employees must not perform any work that will interfere with the safe Passage of trains, unless on track protection is provided.

OTS 31.2 - Responsibilities of the Roadway Worker

Each Roadway Worker Must:

Follow On-Track Safety procedures.

Do not foul a track except when necessary in the performance of duty.
Ascertain that On-Track Safety is being provided before fouling a track.

Refuse any directive to violate an On-Track Safety rule and promptly notify your Supervisor when the safety provisions, to be applied at the job site, do not comply with the rules.

The Board finds there is insufficient evidence that Claimant violated OTS 29.2, ¶ 4. In this regard, given Claimant's 26 years of experience and the assistance provided by the Roadmaster's staff to obtain track protection, there was no good faith basis for Claimant to challenge and refuse the B-17 tower operator's instruction. The tower operator granted verbal permission ("go ahead proceed with the signals") for Claimant to enter the manual interlock and traverse track to absolute signals. The Board finds there is insufficient evidence that Claimant violated ¶ 5 because, as written and applied literally, Claimant only passed through the manual interlock and did not perform any work within it. Claimant performed work on CP 2 with proper protection -- Form B. For the reasons and findings that Claimant did not violate OTS 29.2, ¶¶ 4 and 5, the Board finds there is insufficient evidence to find Claimant violated OTS 31.2 - Responsibilities of the Roadway Worker.

Since there are no rules violations, the Board will sustain the claim and grant the Organization's requested remedy. In doing so, however, the Board recognizes the enduring and daily emphasis for on track safety such that having proper track protection is not diminished but reinforced. Claimant is on notice that the circumstances presented in this claim are considered a rules violation by CP and will be treated accordingly should the circumstances be repeated.

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Award

Claim sustained.



Patrick Halter
Neutral Member



Anthony Mosso
Carrier Member



Ryan Hidalgo
Organization Member

Dated on this 5th day
of Jan, 2018