

PUBLIC LAW BOARD NO. 7564

Case No. 120/Award No. 120
Carrier File No. 10-21-0083
Organization File No. C-21-D040-7
Claimant: W.G. Jager

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim

By letter dated November 19, 2020, Mr. W.G. Jager was issued a Level S 30-day suspension and a three-year review period because of his alleged "failure to properly check [the] pump drive oil and daily record fluids in the logbook for Regulator X0600269, leading to the pump drive breaking and causing significant damage and being inoperable for several days on September 28, 2020 at approximately 1200 hours while working as a regulator operator." The Claimant allegedly violated Engineering Instruction ("EI") 14.3, Operator Responsibilities.

The Organization's December 31, 2020, claim from Randy S. Anderson, Vice General Chairman, appealed the discipline, characterizing it as failing to show by substantial evidence that the charged employee is guilty of the charges. The Organization requested that the discipline outlined in the letter received by the Organization on November 20, 2020, be "overturned...and... [Claimant's] personal record cleared of this discipline and any mention of this investigation."

Facts

By letter dated September 30, 2020, the Claimant received notice that "[A]n investigation has been scheduled at 0900 hours, Friday, October 9, 2020 at ... Lincoln, NE ... for the purposes of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly check pump drive oil and record fluids daily in log book for Regulator X0600269, leading to the pump drive breaking and causing approximately \$6200 in damages and the machine being inoperable for several days on September 28, 2020, at approximately 1200 hours at or near MP54.3 on the Creston subdivision, Lincoln, NE while

working as a regulator operator on gang ID TTPX0049.”¹ After a postponement by mutual agreement, the investigation occurred on October 22, 2020, at 1300 hours.

Carrier Position

The Carrier avers that the investigation was fair and impartial. Further, the testimony of the Carrier’s witnesses provided substantial evidence regarding the violation. Claimant conceded failing to complete the daily log for September correctly and failing to adhere to the EI 14.3. Claimant was not prejudiced by any alleged procedural errors and the assessed discipline was not excessive, arbitrary, or unwarranted.

Organization Position

The Organization asserts that the investigation was not fair and impartial. Claimant was presumed guilty prior to the hearing. Moreover, the Carrier failed to meet its burden of proof because the record lacks sufficient facts and evidence. Further, the discipline issued was excessive and arbitrary.

Findings

Claimant is charged with violating EI 14.3, Operator Responsibilities which provides the following:

14.3.2 Inspecting Roadway Equipment

Equipment Operators must keep roadway equipment clean and orderly as

follows:

1. Inspect equipment throughout the day to ensure:
Bearings and machinery are properly lubricated.
2. Each day, check engine oil, hydraulic oil, coolant level, air filter restriction indicator, fuel reservoir level, power shift transmissions, and all pump drives and gear cases for leaks before initial machine start-up

Claimant testified that prior to commencing his vacation Regulator X0600269 was running fine. Both parties concede that an unknown individual operated the machine from September 24, 2020 through September 25, 2020, while Claimant was away. Claimant testified that when he returned to work on September 28, 2020, there was an issue with the machine.

Carrier witness Mr. Bard, a Traveling Mechanic, credibly testified that the pump drive gears locked up from a lack of gear oil. Although Claimant maintains that he complied with the requirement to check the pump drive gear oil, he concedes that he failed to correctly enter the

¹ Exhibit 1.

information in the logbook. The evidence supports the Carrier's position that the pump drive gear oil was unchecked and that the gears locked up from a lack of gear oil.²

Based on a review of the record, the Carrier established by substantial evidence that the claim should be denied.

Award

Claim denied.

Order

This Board, after consideration of the dispute identified above, hereby orders that no Award favorable to the Claimant be made.



Zachary Voegel, Organizational Member



Joe Heenan, Carrier Member



Melinda Gordon, Neutral Referee

DATED: June 20, 2023

² See, Carrier Exhibits 5, 8,9,10,11.