

PUBLIC LAW BOARD NO. 7564

Case No.: 39/Award No.: 39
Carrier File No.: 10-13-0452
Organization File No.: C-13-D040-30
Claimant: Travis Allen Dorrell

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

Statement of Claim:

1. The discipline (Level S 30 Day Record Suspension) imposed upon Mr. Travis Allen Dorrell by letter dated June 7, 2013, for alleged violation of MOWOR 1.19 Care of Property and MOWOR 8.2 Position of Switches on April 30, 2013 at approximately 1517 hours, for alleged failure to properly brief before initiating movement through the west cross over switch, located on the Creston Subdivision, allegedly causing damage to the switch machine and train delay, and failing to report the incident involving Track Stabilizer, while working as Foreman and Machine Operator.
2. As a consequence of the violation referred to in Part (1) above, Claimant Travis Allen Dorrell shall now receive the remedy prescribed by the parties in Rule 40(G).

Facts:

By letter dated May 6, 2013 the Claimant was directed to attend an investigation on May 14, 2013 "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly brief before initiating movement through the West cross over switch, located at MT 1 at CP411 on the Creston Subdivision, causing damage to the switch machine and train delay. And your alleged failure to report the incident involving Track Stabilizer X8600024, on April 30, 2013, at approximately 1517 Hours, while working as Foreman and Machine Operator. The switch was found to have been run through by the Signal Department on May 1, 2013. The date BNSF received first knowledge of this alleged violation is May 01, 2013."

Carrier Position:

The investigation was fair and impartial, without procedural flaws. The appropriate standard of proof is substantial evidence. This burden has been met as the facts show that the

Claimant's machine ran through the switch, with the damage to the switch machine consistent with a run-through. This happened because the Claimant failed to take proper precautions; thereafter he failed to report the damage. The Board must accept the Conducting Officer's credibility determination. Given proof of the damage, in essence the Organization asks for leniency, which is the prerogative of the Carrier but not of the Board, which should not substitute its judgment for the Carrier's. If the claim is sustained, the Claimant has lost no pay and is due only removal of the discipline from his record.

Organization Position:

The Carrier has not shown beyond a reasonable doubt that the Claimant damaged the switch machine. Production Assistant Roadmaster Parker's testimony contained speculation and conjecture and Signal Supervisor Wehland's testimony contained conflicts. There is no proof that the Claimant damaged the switch. There is proof provided by the testimony of Machine Operator Wallentine that a proper briefing was held. Because the Claimant had no knowledge of the damaged switch machine, he cannot be found guilty of a failure to report it. There was no attempt to hide anything. The discipline was excessive and arbitrary, resulting from an investigation that was not fair and impartial.

Findings:

While four MOWORs and one MOWSR were introduced as exhibits during the investigation, the June 7, 2013 notice of discipline premises the record suspension only on violations of MOWOR 1.19 Care of Property and MOWOR 8.2 Position of Switches. Therefore the Board's concern lies only with these two rules. MOWOR 8.2 reads in relevant part, "Employees handling switches and derails must make sure that: When moving over a switch, the switch remains lined for movement until the on-track equipment has moved beyond the fouling point of the adjacent track." The evidence in this case is largely circumstantial, but circumstantial evidence is not necessarily any weaker than eyewitness evidence given what is known about the inaccuracies of observation and memory. What is important when considering circumstantial evidence is that there are no reasonable alternative conclusions that can be drawn from the evidence at hand.

The exhibits provided by the Carrier and explained by Production Assistant Roadmaster Parker show that the switch was undamaged when Foreman Delano received track and time and that four minutes later a report that the switch was out of correspondence was received. There is no dispute that the switch machine was damaged beyond repair. There is also no dispute that the Claimant's 120,000 lb. Plasser Track Stabilizer was the first piece of machinery through the switch. There is no evidence indicating that any other piece of machinery was operated through the switch in the four minutes between the time track and time was received and the time of the report that the switch was out of correspondence. None of the witnesses have suggested that the machine running through a properly aligned switch could have caused the damage. And, the Claimant testified that the front trucks of the Plasser Track Stabilizer passed over the switch.

The substantial evidence, even though primarily circumstantial, supports the conclusion that although the Claimant believes the switch was properly aligned, it was not and thus the

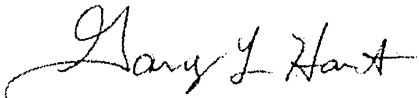
Track Stabilizer irreparably damaged the switch machine. The conclusion that follows is that the Claimant did not exercise sufficient care to make sure that the switch was properly lined for his movement. Therefore he violated MOWOR 8.2. In so doing, the Claimant also violated MOWOR 1.19 because he improperly used the switch. He received a fair and impartial hearing, with the discipline assessed in accordance with PEPA for what was a serious (Appendix A) violation.

Award:

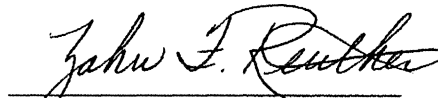
Claim denied.

Order:


The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas
April 23, 2015