

**PUBLIC LAW BOARD NO. 7564**

Case No. 51/Award No. 51  
Carrier File No. 10-14-0192  
Organization File No. C-14-D040-12  
Claimant: Gayle Tjaden

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BNSF RAILWAY COMPANY )  
 )  
-and- )  
 )  
BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYES DIVISION )  
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**Statement of Claim:**

1. The Carrier violated the Agreement on May 8, 2014 when it assessed Claimant, Gayle Tjaden, a Standard Formal Reprimand, with a 1-year review period, for alleged violation of MWOR 9.13.1 Hand Operation of Dual Control switches and MWOR 8.3 Main Track Switches, for Claimant's failure to obtain permission from the control operator to operate a dual control switch by hand when working at Control Point 603 on the Ravenna Subdivision, on 8 April 2014 at or about 0935 hours.
2. As a consequence of the violation referred to in part (1), Claimant's record should be cleared of the discipline and any mention of the investigation.

**Facts:**

By letter dated April 10, 2014 the Claimant was informed of an investigation to be held on April 22, 2014 "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to brief with and obtain permission from control operator to operate a dual control switch by hand after receiving authority 394-6, when working within limits of EBCS CP603 and WBCS CP603 on the Ravenna Subdivision, on 8 April 2014 at or about 0935 hours."

**Carrier Position:**

The investigation was fair and impartial with no procedural flaws and no prejudice to the Claimant proved by the Organization. Substantial evidence shows that the Claimant moved the switch before getting confirmation of or follow-up to his request, based on his assumption that he had permission to do so. Discipline was in accordance with the Policy for Employee Performance Accountability (PEPA). The Board, absent

Carrier abuse of discretion, should not substitute its judgment for that of the Carrier and should not usurp the Carrier's prerogative to provide leniency. Should the Claim be sustained, the Claimant is due only the remedies called for in Rule 40G, which do not include back pay in this case.

**Organization Position:**

MWOR 8.3 Main Track Switches was not mentioned during the investigation, nor was a copy of the rule entered as an exhibit. Because the Claimant was thereafter disciplined for violating this rule, he was denied due process and the investigation was not fair and impartial. Director of Administration Compton, who issued the discipline, was not at the investigation and therefore cannot decide credibility issues. MWOR 9.13.1 Hand Operation of Dual Control Switches says nothing about briefing and the discipline letter does not mention a failure to brief. Roadmaster Biro testified that the Claimant had permission to move the switch. There is no evidence that the Claimant is unsafe or that he willfully or maliciously violated the rules.

**Findings:**

As the Organization surely knows, there is ample precedent establishing that the Conducting Officer and the officer issuing discipline may be different individuals. The Board believes that the better practice is to have the two roles combined, particularly in cases where credibility is an issue, but it is not in this case. The investigation was not fair and impartial regarding MWOR 8.3 Main Track Switches. This rule was not introduced as an exhibit during the investigation. As a result the Claimant was not put on notice as to the standard against which his conduct was being measured and the Board cannot say whether the Claimant's behavior on April 8, 2014 met or fell short of the standard. Consequently, the Carrier has not proved with substantial evidence that Rule 8.3 Main Track Switches was violated.


MWOR 9.13.1 Hand Operation of Dual Control Switches simply requires that "an employee must get permission from the control operator to operate a dual control switch by hand." There is no language about briefing the control operator, although inherent in the rule is the employee's obligation to ask for permission to operate the switch by hand and the reason therefor. The Claimant testified, credibly in the Board's view, that he was using Smart Mobil Client to communicate with Dispatcher Carmichael, and to request hand operation of the switch and that at some point after the request was made the SOH icon appeared on his computer screen and that he and Mr. Myer, with whom he was working, both believed that permission had been granted. Dispatcher Carmichael testified that she had never seen a Smart Mobil Client machine and was unfamiliar with the screen. Therefore, Dispatcher Carmichael was not in a position to authoritatively dispute the Claimant's testimony that he and Mr. Myer believed permission to hand operate the switches had been granted. The Carrier has not shown with substantial evidence that a violation has been committed.

**Award:**

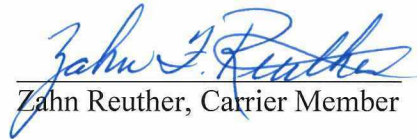
Claim sustained.

**Order:**

The Board, after consideration of the dispute identified above, hereby orders that the Claimant receive the remedy called for in Rule 40G. The Carrier shall make the award effective on or before thirty (30) days after the award is adopted.



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas  
November 30, 2015