

**PUBLIC LAW BOARD NO. 7564**

Case No. 58/Award No. 58  
Carrier File No. 10-15-0101  
Organization File No. C-15-D040-9  
Claimant: Ruben M. Valencia

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

By letter dated December 1, 2014, Track Inspector Ruben Valencia was given a Level S 30 Day Record Suspension and a three-year review period for an alleged violation of MOWOR 6.3.2 Protection on Other Than Main Track. The January 2, 2015 claim from the Organization, George L. Loveland, Vice General Chairman, appealing the discipline, includes the request that "the discipline of Mr. Valencia be overturned, he be compensated for any time lost and that this discipline be removed from and no mention of this be placed on his personnel record."

**Facts:**

By letter dated September 4, 2014 the Claimant was informed that "An investigation has been scheduled at 1000 hours, Tuesday, September 16, 2014 . . . [in] Aurora, IL . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to provide proper track protection on other than main track, while supervising contract welders in the Hill Yard on the Chicago Subdivision, near MP 37 on September 2, 2014 at approximately 13330, while working as Track Inspector assigned to Gang TINS1077 on the Chicago Division." As the result of two mutually agreed-upon postponements, the investigation was held on November 7, 2014.

**Carrier Position:**

The Carrier submits that the required substantial evidence was obtained by the Claimant's admission during the investigation to a number of violations adding to a failure to provide proper protection. The Organization's due process arguments are unsupported and there is no evidence of procedural defects that caused harm or prejudice to the Claimant. If there is to be leniency, it is the Carrier's prerogative and not the Board's. Moreover, the Board should accept the

Conducting Officer's credibility determinations. If the claim is sustained, because no time or money was lost, the Claimant is due only the removal of the discipline from his record.

**Organization Position:**

The Claimant did not get a fair and impartial hearing as the Conducting Officer tried to create confusion and Assistant Division Engineer Lopez did not provide credible testimony. There was no evidence that the Claimant was unsafe or that he maliciously or intentionally violated rules. In fact, he provided more protection than was necessary. Discipline imposed was excessive and arbitrary.

**Findings:**

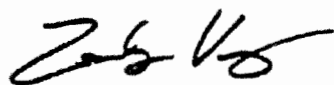
The Board believes relatively little in the way of explanation is necessary in this case. The conduct of the investigation met the fair and impartial requirements of Rule 40.A. Moreover, the Board is satisfied that Assistant Division Engineer Lopez provided credible testimony. There is agreement that the Claimant had properly protected against movement at the east end of the Hill Yard, where contract welders were working. MOWOR 6.3.2 Protection on Other Than Main Track required that Claimant assure one or two things were done at the west end of the yard to establish track protection for the welders. The Claimant could have used red flag protection, but instead used blue flag protection, which did not comply with MOWOR 6.3.2. Having a red flag close at hand when Claimant Valencia was at his truck did not excuse or compensate for use of blue flag protection. Alternatively, the Claimant could have placed derailleurs with Maintenance of Way locks. While he properly placed the derailleurs, he admittedly used mechanical locks on some of the derailleurs, again in violation of MOWOR 6.3.2. Also, Assistant Division Engineer Lopez's testimony that the switch at the west end of the yard was improperly lined for a trailing point move rather than properly lined for a facing point move was not disputed. Rather than offering more protection than necessary as the Organization contends, the Claimant offered less protection than required. Failure to protect the welders was an unsafe practice deserving of the corrective discipline that was imposed.

**Award:**

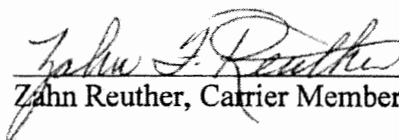
Claim denied.

**Order:**

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



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas  
August 15, 2017