

PUBLIC LAW BOARD NO. 7564

Case No. 59/Award No. 59
Carrier File No. 10-15-0142
Organization File No. C-15-D070-3
Claimant: Taylor Applebee

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

Statement of Claim:

By letter dated February 24, 2015, Track Inspector Taylor Applebee was dismissed for an alleged violation of MOWOR 1.6 Conduct. The March 22, 2015 claim from the Organization, Randy Anderson, Vice General Chairman, appealing the discipline, requests “reinstatement to service with seniority unimpaired and for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, and any and all other benefits to which entitled . . .”

Facts:

By letter dated December 30, 2014 the Claimant was informed that “An investigation has been scheduled at 0900 hours, Friday, January 9, 2015, at . . . York, NE . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to perform track inspection on the Benedict Subdivision as reported to Roadmaster George Biro, on December 28, 2014.” By mutual agreement, the investigation was twice postponed and ultimately conducted on February 5, 2015 in York, NE.

Carrier Position:

The Carrier notes that the Claimant allegedly inspected the track on his rest day. He put in for eight hours of overtime at the end of the day. However, when Roadmaster Biro inspected that portion of the track the next day, there were no signs that the Claimant had either walked the track or used the hy-rail. The Claimant's explanation that his TIMS report covered previous December inspections that had not populated amounted to an admission that on December 28, 2014 he had not done all the inspection work that he claimed. This provided substantial

evidence. The dismissal was consistent with the Policy for Employee Performance Accountability (PEPA) as dishonesty is a stand-alone dismissible violation. If the claim is sustained, the Claimant should only receive compensation for wages missed offset by outside earnings.

Organization Position:

The Organization does not believe that the Claimant received a fair and impartial hearing as the Carrier failed to produce substantial evidence of the charge. Inspector Applebee found no defects, so there was nothing to report. There was no proof that the Claimant did not walk the rails. There is evidence of issues with the HCLS unit on the hy-rail, thus inaccurate data may have been transmitted. The term "traverse" may refer to use of the hy-rail or inspection on foot. If the claim is sustained, the Claimant is due more than just lost wages with outside earnings offset.

Findings:

Late on December 28, 2014 Track Inspector Applebee e-mailed Roadmaster Biro that earlier that day, the Claimant's rest day, he had inspected track, claiming eight hours at the overtime rate. An FRA inspection report filed by the Claimant shows nine miles of track inspected. Roadmaster Biro's inspection the next day of the track allegedly inspected by the Claimant led the Roadmaster to believe that Inspector Applebee had provided false reports. As detailed below, the investigation confirmed Roadmaster Biro's conclusion.

On December 30, 2014 Roadmaster Biro discussed the December 28 reports with the Claimant, who, during the investigation, testified that he had walked the track on what was the Benedict Sub. Roadmaster Biro testified that when he and the Claimant talked, the Claimant said that he had set his assigned hy-rail on the track and had traversed the line, but said nothing about walking. According to Roadmaster Biro, "traverse" is an industry term associated with the use of a hy-rail and not with walking. When the Roadmaster had inspected the Benedict Sub on December 29, as photographs show, he found no footprints in the snow-covered ground along the track. Moreover, the Claimant did not dispute Roadmaster Biro's testimony that on December 30, he did not say that he had walked the track. The Claimant asked the Carrier and now asks the Board to believe that on a cold, late December day in Nebraska, he opted to walk a minimum of nine miles when he could have used his assigned hy-rail. And, if he left the hy-rail behind, presumably he would had to have walked another nine miles back to his starting point. The Claimant's explanation that he inspected by walking is without credibility.

Roadmaster Biro further testified that there was no indication that the hy-rail was driven anywhere on December 28. Had it been used to inspect the Benedict Sub, the Claimant would had to have shoveled gravel at the four or five road crossings so that the hy-rail would not have derailed. Photographs taken by the Roadmaster show no indication that gravel was shoveled or that wheel flanges had disturbed accumulated gravel. The Claimant explained that he drove the hy-rail to the Benedict Sub before setting out on foot, but that the travel may not have been recorded because of the faulty visual display unit (VDU) that is part of the hy-rail's HCLS, which includes a GPS monitoring device. Randal McCoy, Network Manager, NOC, explained

that the HCLS is activated when the hy-rail's ignition switch is turned out. The VDU is separate from the HCLS radio that transmits GPS position reports. Therefore, even if the VDU is inoperative, GPS position reports are still being transmitted. Manager McCoy acknowledged that HCLS units do not always work correctly, but he also testified that the unit in the claimant's assigned hy-rail worked properly on December 28. The credible evidence supports the conclusion that not only was the hy-rail not used to inspect the track on December 28, 2014, it was not driven anywhere that day.

Finally, the Organization asserts that because the Claimant found no defects, there was nothing to report. Roadmaster Biro testified that the Claimant submitted an FRA track inspection report. Even if the Claimant had inspected and had found nine miles of track in perfect condition, the report was necessary if only to document that an inspection had been conducted within the FRA-specified time frame for that particular class of rail. All of the evidence points to a report that documented an inspection that did not occur.

Track inspection is a critical activity. Failure to identify defects and to protect track has led to derailments resulting in extensive property damage, serious injury and even death. There is no room in the industry for dishonest track inspectors who claim to have inspected track when they have not done so. The evidence of the Claimant's dishonesty far surpasses the "substantial evidence" requirement. The dismissal was in accordance with PEPA and fully justified.

Award:

Claim denied.

Order:

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



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
August 15, 2017