

PUBLIC LAW BOARD NO. 7564

Case No. 63/Award No. 63
Carrier File No. 10-15-0215
Organization File No. C-15-D040-15
Claimant: Erick M. Bettin

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

Statement of Claim:

By letter dated March 19, 2015 Track Inspector Erick Bettin was assessed a Level S 30 Day Record Suspension and a three-year review period for an alleged violation of MOWOR 1.6 Conduct. The April 7, 2015 claim from the Organization, James Varner, Vice General Chairman, appealed the discipline said to have been "excessive and without merit." As a consequence of the violation, the Organization asks that the Carrier "remove this discipline from Mr. Bettins (sic) record in accordance with Rule 40 of the current agreement."

Facts:

By letter dated January 29, 2015 the Claimant was informed that "An investigation has been scheduled at 1000 hours, Thursday, February 5, 2015 at . . . Denver, CO . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged dishonesty reporting track inspections on December 29 and 31, 2014. The date BNSF received first knowledge of the alleged violation is January 22, 2015. A mutually agreed-upon postponement moved the investigation to February 19, 2015 with no change in location.

Carrier Position:

The Carrier has shown that the Claimant reported that he had inspected switches on days when he had not done so. If he had inspected the switches, the inspections should have been reported within 24 hours. The Claimant's explanations do not hold up to logic, therefore the Claimant was fortunate that he was not dismissed. The substantial evidence adduced at the investigation led to discipline in accordance with PEPA. Leniency, when applied, is the Carrier's prerogative and not the Board's. If there were procedural errors, the Organization has

not shown harm or prejudice to the Claimant as a result. If the claim is sustained, the Claimant should receive only the remedies called for in Rule 40.G.

Organization Position:

The Organization asserts that the Claimant received neither a fair and impartial investigation nor due process. The Claimant's guilt was pre-judged by the Conducting Officer and there was collusion between the Conducting Officer and Carrier witnesses to assure correct documents were entered. Moreover, while the Claimant was disciplined for a violation of MOWOR 1.6 Conduct the rule was not mentioned or entered as an exhibit during the investigation. The Carrier has failed to provide substantial evidence of a violation.

Findings:

The trigger for this dispute was Track Inspector Bettin's TIMS report that on December 31, 2014, a holiday, he worked for 3.5 hours at the overtime rate inspecting 68 switches. Once this came to the Carrier's attention on January 22, 2015, an investigation was scheduled. The Organization's procedural/due process contentions are unpersuasive. The Board does not find evidence that Conducting Officer Aeschliman pre-judged the Claimant. The recess to allow Roadmaster Akers to obtain the correct document for an exhibit after he mistakenly brought the wrong one was not collusion and the contention that he was coached amounts to speculation that falls short of proof.

As to the substance of the matter, Roadmaster Akers testified that the Claimant worked 3.5 hours at the overtime rate on December 31, 2014 and reported that he had inspected 68 switches while walking. Roadmaster Akers further reported that it should take approximately 15 minutes to inspect a switch, so that the math, based on the Claimant's TIMS report, indicated that he spent three minutes per switch and that using 15 minutes per switch he would have inspected about 14 switches on December 31. Roadmaster Akers further indicated that inspection times for switches with and without self-guarded frogs would not vary because of the different components involved. He added that the FRA requires that the switches be inspected once every 20 days and that he has spoken with the Claimant about reporting failures with the Claimant's laptop and suggested that the Claimant use a computer plugged to a more reliable land line. The Roadmaster believes that the Claimant should have realized earlier that filing inspection reports was a problem.

The Claimant acknowledged his 3.5 hours on December 31, when he finished his inspections for the month while walking. He recalled speaking to Roadmaster Akers several times when reports submitted on his laptop with an air card would show green, indicating an inspection had been done, but then later the green indicator would disappear. The Claimant said that he had pretty well stopped using the old laptop in favor of a computer attached to a land line. He acknowledged that he had 24 hours after an inspection to file a TIMS report and also acknowledged that not all of the switches reportedly inspected on December 31 had been inspected that day, although all had been inspected. The Claimant disputed Roadmaster Akers' 15 minute/switch figure, testifying that 5 minutes/switch was the more accurate estimate of time needed. The Claimant was unable to recall how many switches he inspected on December 31.

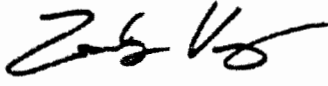
When the evidence is boiled down to the critical aspect, certain facts are clear. As a Track Inspector, the Claimant was required to conduct inspections in accordance with FRA requirements, to include the timing of inspections. TIMS inspection reports are to be filed within 24 hours of the inspection. If the use of a laptop with an air card made the filing of reports problematic, the Claimant should have been compelled to solve the problem and treat it with more urgency than he did. While it may not have been intentional, the December 31 TIMS report contained false information—a dishonest act on the Claimant's part. The Board notes that dishonesty may be a stand-alone dismissible offense. It appears that, possibly because of laptop transmission issues and because of a conclusion that the Claimant had actually inspected all 68 switches, although not on December 31, a record suspension was issued rather than a dismissal. While the Claimant may have been well intentioned, the evidence of a violation is substantial and the Board has no basis for setting aside the discipline.

Award:


Claim denied.

Order:


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



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

August 15, 2017