

PUBLIC LAW BOARD NO. 7564

Case No. 64/Award No. 64
Carrier File No. 10-15-0255
Organization File No. C-15-D070-7
Claimant: Erick M. Bettin

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

Statement of Claim:

By letter dated April 10, 2015 Track Inspector Erick Bettin was dismissed for an alleged violation of EI 2.1 Purpose of Track Inspections. The May 15, 2015 claim from the Organization, James Varner, Vice General Chairman, appealed the excessive and meritless dismissal and asked that the Claimant be immediately reinstated "with back pay and any other losses he may have incurred and that this discipline be removed from Mr. Bettins (sic) record in accordance with Rule 40 of the current agreement."

Facts:

By letter dated March 5, 2015 the Claimant was informed that "An investigation has been scheduled at 1000 hours, Thursday, March 12, 2015 at . . . Denver, CO . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to protect defective track condition resulting in derailment at Terrill Jct. on February 26, 2015." As the result of a mutually agreed upon postponement, the investigation was held on March 13, 2017 at the original Denver CO location.

Carrier Position:

The Carrier notes that track for which Track Inspector Bettin was responsible had not been inspected between June and October or in December 2014, with monthly inspections required. There was evidence of a previous wide-gauge condition, as the track at MP 11.80 was taken out of service on a March 25, 2014 TIMS report, but the track continued to be used. Substantial evidence indicates that the track defect caused the February 26, 2015 derailment. The dismissal was in accordance with PEPA. Leniency, if exercised, is the prerogative of the

Carrier, not the Board. If the claim is sustained, the Claimant should receive compensation only for lost wages minus an offset for outside earnings.

Organization Position:

The Organization insists that the Claimant was not given a fair and impartial investigation because the notice of the investigation was vague and his guilt had been pre-determined. The Carrier did not present substantial evidence that Claimant Bettin was at fault. He had been given added duties that interfered with his ability to conduct the inspections. TIMS reporting was defective. If the claim is sustained, the Claimant should receive the remedy called for in Rule 40.G, with no offset for outside earnings and "a reasonable calculation of overtime and . . . reimbursement for premiums, deductibles and co-pays which would have been covered by the Claimant's insurance had he not been wrongfully terminated."

Findings:

The Board finds the following uncontested facts: 1. The relevant track was not inspected from June through October and again in December 2014. 2. When the track at MP 11.80 was measured following the February 26, 2015 derailment, it measured 58.5," a half inch out of tolerance. 3. The track conditions were not caused by the derailment. 4. The Mechanical, Engineering and Transportation Departments concluded that the track conditions caused the derailment. 4. The defect, progressive in nature, was not noted by the Claimant and, while the track was taken out of service on the TIMS report, the track continued to be used as it had to be taken out of service in the field.

The Organization's contention that the Claimant's failure to inspect was because the extra duties that he had been assigned occupied his time is unpersuasive. He had a responsibility to the Carrier to properly discharge his assignment and a responsibility to himself to protect his assignment, if not his employment, by meeting his responsibilities, which were mandated not only by the Carrier but by the FRA. While the Claimant testified that he assumed he was get help with his inspection duties, there is no evidence that he was formally relieved of any or all of his track inspection duties, which are far too critical to the protection of life and property to be treated as casually as the Claimant seemed to treat them. While the Claimant may have shown some track as repaired, he was unable to say that it was the track at MP 11.80 and all evidence indicates that it was not. The Carrier provided substantial evidence of Track Inspector's violation of EI 2.1 Purpose of Track Inspections.

The Board has denied Mr. Bettin's claim in PLB No. 7564, Award No. 63. Therefore, this is his second serious violation within a 36-month review period and, actually, the second serious violation within a one-month span. It is also a stand-alone dismissible violation under PEPA. The Board finds no evidence of pre-judgment and is satisfied with the specificity of the notice of investigation. There is no justification for disturbing the discipline imposed.

Award:

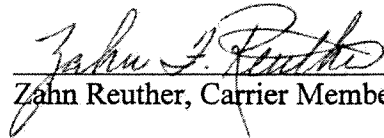
Claim denied.

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

Austin, Texas
August 15, 2017