

PUBLIC LAW BOARD NO. 7564

Case No. 73/Award No. 73  
Carrier File No. 10-16-0091  
Organization File No. C-16-D040-7  
Claimant: D. Robert Welsch

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

**Statement of Claim:**

By letter dated December 18, 2015 Welder D. Robert Welsch was given a Level S 30-Day Record Suspension and a One (1) Year Review period for his "failure to restore hand operated switch protecting access to the main track to the correct position on October 28, 2015." The January 13, 2016 claim from the Organization, Jim L. Varner, Vice General Chairman, appealed the excessive and meritless discipline and asked that it "be removed from his [Claimant's] record in accordance with Rule 40 of the current agreement."

**Facts:**

By letter dated November 2, 2015 the Claimant was informed that "An investigation has been scheduled at 1000 hours, Wednesday, November 11, 2015, at the Conference Room, 3700 Globeville Road, Denver, CO, 80216, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to restore hand operated switch protecting access to main track to the current position on October 28, 2015." After two (2) mutually agreed upon postponements, the investigation was held on December 2, 2015 at the originally scheduled time and location.

**Carrier Position:**

The Carrier asserts that the Claimant's admission that he violated MWOR 8.2 Position of Switches by not restoring the hand-operated switch provides the necessary substantial evidence. Discipline was assessed in accordance with the Policy for Employee Performance Accountability (PEPA) Appendix A. The Organization asks for leniency, which is the Carrier's province, not the Board's, which should not substitute its judgment for that of the Carrier. If the Claim is sustained, the Board should order removal of the discipline from the Claimant's records and no more. The Organization's procedural arguments, which have not been shown to prejudice the Claimant, are moot due to the Claimant's admission.

**Organization Position:**

The Organization insists that the discipline was arbitrary and capricious and that the Claimant received neither a fair and impartial hearing nor the required due process. The Conducting Officer coerced witnesses. The Claimant threw the switch. Welding Supervisor Gribble said that he was not near the switch, but he was seen near the switch by others. Supervisor Gribble was responsible, but the Claimant was disciplined. Assistant Roadmaster Dunn's role was irrelevant and proves nothing. The Claimant is a valuable employee who has not been shown to be unsafe.

**Findings:**

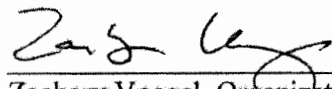
The Board, having carefully read the transcript, finds that Conducting Office Paz did an excellent job of conducting the investigation so that the Organization's allegations that the investigation was not fair and impartial and that the Claimant's due process rights were violated are unavailing. The Board notes that in what seemed to be an inadvertent omission, MWOR 8.2 Position of Switches, was not identified in the disciplinary letter as the Rule violated. The omission is not seen as problematic because MWOR 8.2 was mentioned during the investigation and was entered as an exhibit. Moreover, the Claimant was specifically asked about MWOR 8.2. The Board notes that there is some conflict within the various testimonies and some inconsistency within Scott Welsch's testimony, but the inconsistencies are irrelevant and do not need to be addressed. None of the witnesses saw the hand-operated switch realigned to the main track. The Claimant forthrightly testified that he opened the switch to the siding, did not restore the switch so that it was lined main to main, did not verify that the switch was properly lined, was solely responsible for the failure to reline the switch and thus violated MWOR 8.2 Position of Switches. The discipline was appropriate and the Board finds no reason to say more.


**Award:**

Claim denied.

**Order:**

This 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

A handwritten signature in black ink, appearing to read "I. B. Helburn", followed by a long horizontal line extending to the right.

---

I. B. Helburn Neutral Referee

Austin, Texas  
January 31, 2018