

PUBLIC LAW BOARD NO. 7564

Case No. 91/Award No. 91
Carrier File No. 11-18-0095
Organization File No. T-D-5398-M
Claimant: Saul R. Interial

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

Statement of Claim:

By letter dated October 16, 2017 Assistant Foreman Saul R. Interial was assessed a Level S 30 Day Record Suspension and a One Year Review Period for his alleged "failure to properly lock the main-track switch at MP 188.4 (M2) on the Staples Subdivision while assigned as the Assistant Foreman on gang TTPX004." On December 13, 2017 the Organization, John A. Mozinski, Jr., Vice Chairman/Secretary-Treasurer, filed a claim on Assistant Foreman Interial's behalf. The claim states that:

Therefore, due to this excessive and prejudged discipline, Mr. Interial must be immediately paid for his lost time for the day he attended the investigation, including any and all overtime paid to the position he was assigned to work, any expenses lost, difference in pay, and we also request that Mr. Interial be made whole for any and all benefits, and his record cleared of any reference to any of the discipline set forth in the letter received by the Organization on October 17, 2017 letter from Abigail Williams.

Facts:

By letter dated August 23, 2017 the Claimant was informed that:

An investigation has been scheduled at 1000 hours, Tuesday, September 5, 2017, at the BNSF Division office, 801 Main Avenue, Fargo, ND, 58103, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly lock the main-track switch at MP 188.4 (M2) on the Staples Subdivision while assigned as the Assistant Foreman on gang TTPX004."

On September 5, 2017 and again on September 11, 2017 the investigation was mutually postponed, and ultimately held on September 21, 2017 at 1000 hours at the Roadmaster's Office, 300 NW 1st, Little Falls, MN 56345.

Carrier Position:

The Carrier contends that there is substantial evidence that MWORs 8.2 Position of Switches and 8.3 Main Track Switches, were violated. The Claimant received a fair and impartial investigation. Locks must be placed on the switch stand, not the box housing the electrical time lock. In his response to the claim filed by Mr. Mozinski, Mr. Chad Sundem, General Manager, Twin Cities Division, reduced the record suspension and review period to a Formal Warning. The reduced discipline is consistent with the Policy on Employee Performance Accountability (PEPA).

Organization Position:

The Organization asserts that the Claimant, because he was prejudged, did not receive a fair and impartial investigation. Moreover, there was no violation of either MWOR 8.2 or 8.3. The Claimant threw the switch so that the gang could move off of the main line at the end of the day, then realigned the switch for main line use and locked and secured the switch. There is agreement that the switch was properly aligned and that with the lock on the box housing the time lock, the switch could not be thrown. Roadmaster Albert Mattison agreed that this was so. The Claimant is supported by the statements of nine employees with relevant experience.

Findings:

Portions of MWOR 8.2 Position of Switches and MWOR 8.3 Main Track Switches are relevant to this dispute. MWOR 8.2 states that "The employee operating the switch or derail is responsible for the position of the switch or derail in use" and "After locking a switch or derail they test the lock to ensure it is secured." MWOR 8.3 states that "The normal position of a main track switch is for main track movement and it must be lined and locked in that position" and "Before reporting clear of a track warrant, track and time or track permit, main track switches must be lined and secured in the normal position." Neither of these MWORs is specific as to precisely how to lock and secure a switch. There is no evidence in the record to establish a specific requirement to put the lock on the switch. The Carrier has not shown that doing so is the practice or that the Claimant was trained to do so. The Carrier and the Organization are in agreement that the Claimant left the switch lined for main track movement. Roadmaster Mattison testified that with the lock on the time lock box rather than on the switch stand itself the switch could not be thrown. The nine statements placed in evidence by the Organization are consistent with Roadmaster Mattison's admission that the lock on the time box prevented the switch from being thrown. The admission and the statements support the Claimant's contention that he locked the switch. And, the Claimant's testimony that he tested the lock on the time lock box was not challenged.

In the final analysis, the Claimant's performance of this particular duty was consistent with the requirements contained in the relevant MWORs. If the Carrier wishes the requirements to be accomplished in a particular manner, then it carries the burden of establishing the specific operating procedures it wishes followed and establishing that these operating procedures have been conveyed to the appropriate employees. Failing to do so, the Carrier cannot assess even minor discipline for an alleged violation.

Award:


Claim sustained.

Order:

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant be made no later than thirty (30) days after the Award is adopted.



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas
April 29, 2019