

PUBLIC LAW BOARD NO. 7564

Case No. 96/Award No. 96
Carrier File No. 11-19-0018
Organization File No. T-D-5647-M
Claimant: Henry J. Zach

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

Statement of Claim:

By letter dated August 8, 2018 Assistant Foreman Henry J. Zach was assessed a Level S 30 Day Record Suspension and a one year review period for an alleged violation of MWOR 12.4 Work at Multiple Locations Over an Extended Distance and MWOR 2.14.2 Before Reporting clear or Releasing a Portion of Authority Limits. The October 6, 2018 claim from the Organization, John A. Mozinski, Jr., Vice General Chairman and Secretary-Treasurer, ended with the following: "Therefore, due to this excessive and prejudged discipline, Mr. Zach must be immediately paid for his lost time on 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. We also request that Mr. Zach 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."

Facts:

By letter dated June 29, 2018, corrected that day and again on July 10, 2018, the Claimant was informed that "An inspection has been scheduled at 1000 hours, Thursday, July 11, 2018, at the BNSF Railway 300 NW 1st St. Little Falls, MN 56345, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged form b protection incident on June 27, 2018 at approximately 1015, while working as an assistant foreman on RP07 near MP 203.5 on Staples Subdivision you failed to protect men when you allowed authority to train to enter form b limits while men still occupied that track and not in the clear. As a result, communication was not made with working crews of the coming train before authority was given putting men and equipment at risk."

Carrier Position:

The Carrier asserts that the investigation was fair and impartial, that the Claimant was not prejudged and that any procedural errors that were made have not been shown to have been prejudicial to the Claimant. Substantial evidence was adduced showing a violation of MWOR

12.4 and MWOR 2.14.2, as the Claimant did not verify that his employees were in the clear before a train was allowed to enter the Form B. Discipline was appropriate and in accordance with the Policy on Employee Performance Accountability (PEPA). Leniency, which is the province of the Carrier and not the Board, was shown when the Claimant was given a Record Suspension rather than dismissed. Because the Claimant lost no money, if the claim is sustained, the only proper award under Rule 40 is to remove the discipline from the Claimant's records.

Organization Position:

The organization insists that the discipline was unwarranted and excessive as the charges have not been proved. The investigation was not fair and impartial and the Claimant was prejudged. The Claimant followed the rules and communicated with the crew, but the operators failed to communicate with him. He is not a mind reader. The claim must be sustained.

Findings:

The discipline and claim arose from a June 27, 2018 incident when the Claimant had the responsibility of ensuring that all of his crew was in the clear before authorizing Coordinator Cory Bellefeu to proceed and Mr. Bellefeu relayed the information to the Claimant, who then spoke to only one Machine Operator before telling Mr. Bellefeu to allow the train to proceed at max speed on Main 2. Roadmaster Williams heard the calls on her radio, contacted two operators in the Claimant's crew and told Mr. Bellefeu to hold up the train. The Claimant said that the operators had not called him as they were required to do but that he knew where the members of his crew were and knew that they were in the clear.

A careful review of the investigation transcript assures the Board that the Claimant received a fair and impartial investigation and that he was not prejudged. MWOR 12.4 requires a subgroup coordinator, which the Claimant was, to alert members of his crew when a train is coming and report to the EIC when crew members have been alerted. MWOR 2.14.2 is not deemed relevant.

The Board is well aware of the Organization's contention that the Claimant followed the rules but that operators in his crew failed to communicate with him and that he knew they were in the clear and could not be expected to be a mind reader. However, there is substantial evidence that the Claimant did not alert operators and then communicate that fact to Mr. Bellefeu. Ultimate responsibility to comply with MWOR 12.4 rested with the Claimant, even if his operators had not communicated with him. The Carrier had a reasonable expectation that the Claimant would follow the relevant MWOR to the letter, particularly when main line traffic was involved. In an inherently dangerous occupation, doing things "by the book" is one of the keys to protecting lives and property. There is no place for sloppy work and assumptions. While BNSF 6867 West did not pass through the Form B area before it was established that the Claimant's crew was in the clear, the incident should serve as a valuable lesson. The Carrier has proved the violation of MWOR 12.4 by substantial evidence. Discipline was in accordance with PEPA, is not considered excessive and therefore will not be set aside.

Award:

Claim denied.

Order:

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

Zachary C Voegel
Zachary Voegel, Organization Member

Zahn Reuther
Zahn Reuther, Carrier Member

A handwritten signature in blue ink, appearing to read "I. B. Helburn", followed by a horizontal line.

I. B. Helburn Neutral Referee

Austin, Texas
June 25, 2020