

PUBLIC LAW BOARD NO. 7585

**Case No. 31 /Award No. 31
Carrier File No.: 10-13-0401
Organization File No.: C-13-D040-19
Claimant: F. R. Johnson**

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION - IBT)

FACTS:

On May 8, 2013, the Carrier issued Claimant Johnson a Standard Formal Reprimand. It alleges he failed to secure Machine BNX5400429 and lock all its working parts in the stowed position, resulting in damage to the center mast buggy. It is the only discipline he has received since his 1975 hire.

CARRIER POSITION:

Roadway Supervisor D. R. Temple testified that prior to track traveling the machine, the Operator is required to physically inspect the locks to make sure that both the locks on the left and right side of the buggy are engaged. He determined that on March 15, 2013, Claimant failed to perform this inspection because the buggy came out of the locks and was damaged. In Temple's view, the spring could not have failed, because if it did the buggy would stay either locked or unlocked all the time.

Temple admitted the Operator's Manual does not require physical inspection. He determined that the lock never fully engaged. The locks are hook locks, he said. At most half an inch lateral movement is possible. In his opinion, bouncing within that half-inch space could not account for the buggy being out of the lock. Temple recalled he had his mechanics inspect the locks on the machine after the incident and they found them to be fully functional. In his view, if the locks were not fully engaged and the machine came across rough track, the lock could open.

Roadmaster J. Williams testified that on March 15, 2013, while on the way to being parked for the night, Claimant's machine's mast buggy struck a concrete crossing plant at the road crossing at Mile Post 590.750. He provided statements from other employees on site:

- Foreman C. Sieber told him the lock must have failed, but they were able to secure it to park the machine. He stated he helped fold up the buggies and saw that the follower was pinned up;
- Claimant said he had noticed nothing out of the ordinary when he raised and locked the follower up. No air was lost from the handbrake so he had no idea why the one side dropped;
- Machine Operator M. Carr's statement did not describe relevant facts.

Williams took pictures of the damage. He acknowledged Claimant crossed over two crossings, a switch and a hot box detector without difficulty prior to the damage of concern. He said the mechanism is either locked or not and if both sides are not locked, it comes down right away. He tried but could not get a partial lock on an identical machine. He said it appeared the mast buggy was stowed when Claimant began moving the machine because if it had not been locked, it would not have made it over the switch and two prior crossings.

ORGANIZATION POSITION:

C. Sieber testified that Claimant locked the buggy up and everything was locked and pinned up when the machine started moving. He said he had several years' experience operating the type of equipment involved. In his view, the bumping of going over the switches and crossings could have caused the pin to slide free of the lock. If it's not latched, it will drop down to the rail, he said.

Claimant testified he had been running the 6700 for over 20 years but the machine in question was one the gang did not normally have. He acknowledged the mast buggy struck the crossing as he was going over. He could not explain why it happened, or why one side fell out while the other stayed in place. He recalled that before advancing into the crossing, he stopped to allow traffic to pass, and turned around to look at his machine. At that point he would have seen it if anything had been hanging down; there was nothing irregular.

He asserted that on the day in question he saw both locks engage. When the button is released, the mechanism either falls into the locks or falls down onto the rail. He explained that while pinning the mechanism, you can clearly see the assembly in the locked position. He agreed the upright bar has half an inch of play, but said a lateral bar can move more. He said the machine in question did not have a problem with buildup. He claimed that after several attempts, they were able to replicate the situation where one side dropped down while the other side remained engaged.

DECISION:

The evidence in this case establishes that on March 15, 2013 BNX54000429 crossed a switch and two crossings without incident before damage to the mast buggy occurred. This evidence persuades the Board that the buggy was stowed upon departure and fell down after the machine was under way.

Both Roadmaster Williams and Claimant stated that either the mechanism is in the locked position or the buggy falls down to the rail. However, Transcript Exhibit 26 shows a pin holding the buggy up, but without being secure enough to keep it up in the event of too much jostling. The hook in the photograph does not securely surround the lateral rod, but only rests against it. There is space between the rod and the shank of the hook. This photograph persuades that Board that a hook can be improperly set in such a way that the mast buggy can be dislodged during transit.

The locks were fully functional upon post-incident inspection. Had there been a defect in the locks which impaired their functionality, this would have been apparent upon inspection. Since no defect in the lock was found, the reasonable conclusion is that the locks would have held up the buggy had they been properly engaged.

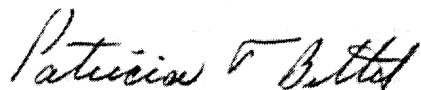
The function of the Board is not to second guess the Carrier, but to determine whether the Carrier presented substantial evidence to support its conclusion that rules were broken. MOWOR 6.50.3 requires an Operator to ensure that all equipment components will clear before passing over crossings, switches, derails and frogs. EI14.4.5 requires all buggies to be stowed when traveling surfacing equipment more than 1000 feet. EI14.3.3.A.9 requires all working components to be in the stowed position for track travel. Plainly, when the mast buggy fell to the rail these requirements were breached. Since no alternative mechanism for failure has been found, the Carrier was reasonable in concluding that the more likely cause was a failure on Claimant's part to ensure that the locks were secure.

As the Organization has pointed out, this case involves a highly experienced employee with a truly stellar record. The Board is fully appreciative of the extraordinary record of the Claimant in this case. That being said, the Carrier has already mitigated the discipline and reduced the penalty. Under the circumstances, the Board does not find grounds for disturbing the Carrier's decision.

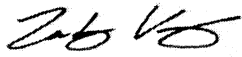
AWARD:

The claim is denied.

September 2, 2015

A handwritten signature in cursive script, reading "Patricia T. Bittel".

Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member