

PUBLIC LAW BOARD NO. 7585

**Case No. 36 /Award No. 36
Carrier File No.: 10-13-0612
Organization File No.: C-13-D040-36
Claimant: C.A. Ropar**

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

FACTS:

On August 15, 2013, Claimant Ropar allegedly failed to secure and pin up all working components of BNX 5400438 in the stowed position. The Carrier maintains this resulted in damage to the rail clamp assembly. On Sept. 13, 2013, Claimant was issued a Standard Formal Reprimand with a one-year review period. The Organization challenges this discipline and seeks its removal with a make-whole remedy.

CARRIER POSITION:

Production Roadmaster B. Ristau testified that he advised everyone on the radio to lock up, pin up and head back the approximate five mile distance to the scorpion car. Ropar subsequently called saying they hit the crossing. The machine was a CAT-09, a super surfacing tamping machine.

Ristau said he drove down and determined the clamps were the part that hit the rail then dragged 300 feet down the track. Claimant was the lookout at the time, while the machine was operated by J. Addeson, a contractor. Addeson was there to teach BNSF employes how to run the machine. Claimant's van was being used, so he was just in there for the ride, Ristau said. Vahrenkamp was in the back of the machine so he could not see the crossing. The machine was doing 25 mph upon impact.

The cylinder arm shown in the post-accident photograph was supposed to be lifted up and placed in a hook. However, the photograph shows it setting on the rail. According to Ristau, Claimant should have made sure it was properly inspected before travelling; "Mr. Ropar's job was to do a lock up/ pin up procedure on that machine." (TR 16)

Ristau acknowledged that if Addeson had looked at it, he would have seen that the locks were not placed in the loop to hold up the frame. In Ristau's assessment, Vahrenkamp locked up/pinned up his side of the machine because it stayed up.

However, Vahrenkamp did not walk the rest of the machine. Vahrenkamp locked up his side of the machine but failed to check to make sure Addeson did.

Engineering Instruction 23.1.3 regarding Assistant Foreman Roles, requires that the assistant foreman "instill a safe, high quality, and productive work environment." MOWOR 6.50.3 requires that all equipment components be verified to clear before crossing. Engineering Instruction 23.1.4 requires that equipment be operated safely.

During the morning briefing, Claimant was identified as the person to report when the machine was ready to travel. In Ristau's view, Claimant, as assistant foreman, should have made sure that Addeson checked the locks. The Carrier's view argues Claimant had an affirmative duty to make sure the machine was properly locked and pinned up before traveling.

ORGANIZATION POSITION:

The Organization maintains that the Notice of Investigation named Claimant as the machine operator. In its view, the Hearing Officer's comment that this would have no impact on the investigation clearly showed prejudgment indicative of unfairness.

Machine Operator A. Vahrenkamp testified that on August 15 there were two operators on the machine. He said that before passing over the crossing, he verified that the profiler would clear; he said he was only trained on the profiler, not the tamper. He recalled Addeson told him he was ready to go as soon as the profiler was locked and pinned. He said he understood from that that the tamper was already locked up and pinned. He asserted that no one ever told him he was responsible for the entire machine being locked up and pinned up. He said he had no interaction with the tamping part and had not been trained on it.

C. Ropar, was Assistant Foreman at the time of the incident. He stated Vahrenkamp was operating the profiler while Addeson operated the tamping part of the machine that day. Claimant explained that Addeson, as a contractor, did not report to him, though he admitted he had the authority to give a contractor an order. He said it was his first day with the machine and though he had run the profiler, he had not been trained on the tamping end.

He recalled being responsible for eight machines spread over several miles and claimed it would have been impossible to walk around each and every machine. Instead, Claimant said he relied on the reports given by his gang. "Nobody has told me, nobody has told me to visually inspect every machine," he said. (TR 37). He admitted Addeson did not specify that his machine was locked up and pinned up. Claimant assumed it was ready because Addeson had moved from the tamping cab to the travel cab, indicating he was ready to go. Addeson never reported a problem about traveling.

The Organization maintains that the responsibility to lock up and pin up the tamping part of the machine lay squarely with Addeson. It contends it is completely unfair to penalize Claimant for this incident when he was not a machine operator that day. It argues he did his job as assistant foreman under EI 23.1.3, and nothing in that rule makes him

responsible for locking up and pinning up a machine. Further it is not reasonable to expect to inspect every piece of equipment before traveling.

DECISION:

As Assistant Foreman, Claimant was responsible to diligently seek to ensure the safe, productive and efficient performance of his gang. However, Claimant's testimony is unrebutted that the eight machines for which he was responsible spanned several miles. It would have been neither efficient nor productive for him to insist on visually inspecting each and every machine any time the gang needed to travel. Claimant was not in breach of his responsibilities as an Assistant Foreman in relying on the reports and communications from his gang regarding their readiness to travel.

In this case, Claimant did not receive an express report from Addeson that the tamping section of the machine was locked up, pinned up and ready to move. Certainly, the Board agrees with the Carrier that it would have been "better" if Claimant had queried Addeson and received definitive verbalization regarding the status of the tamping section. However, in the opinion of the Board, Addeson's movement from the tamping cab to the travel cab spoke volumes. It was reasonably interpreted and understood as conveying the machine's readiness to travel. Claimant's failure to go the extra mile and seek additional confirmation of what he was already seeing cannot be deemed a dereliction of duty.

AWARD:

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident.

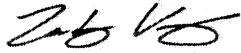
ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

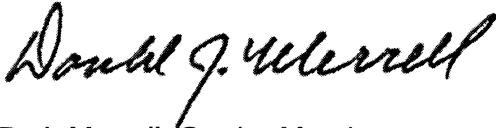
September 2, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member