

PUBLIC LAW BOARD NO. 7585

**Case No. 37 /Award No. 37
Carrier File No.: 10-13-0611
Organization File No.: C-13-D040-35
Claimant: W. C. Husted**

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

FACTS:

On July 3, 2013, Claimant Husted allegedly failed to lock up and pin up Spiker BNX 44-00409, causing it to strike the crossing at MP 253.5 at Kintyre, MT. As a result, the Carrier issued Claimant a Level S 30-day Record Suspension with a one-year review period. The Organization challenges the discipline and seeks its removal along with a make-whole remedy.

CARRIER POSITION:

Roadmaster C. Combs testified he got a call advising that his Spiker had hit a crossing and he needed to go to the site. He asked Claimant what happened, and Claimant told him he hit a crossing with the nipper heads. He took Claimant's statement, wherein Claimant admitted he did not see the crossing in the dark and hit it with his nippers. According to Combs, everything was locked up and pinned up on Claimant's machine except the nippers. In Comb's view, Claimant was not alert since he had been over that crossing before. The incident resulted in damage to the machine. Combs said he talked to the Assistant Foreman who said he had not heard from the operators that they locked up and pinned up for the bump.

MOWOR 6.50.3 requires that all equipment components be checked for clearance before going through a crossing and MOWOR 1.1.2 requires operators to be alert and attentive. EI 14.3.3 makes operators responsible for the maintenance, safety and care of their equipment.

In the Carrier's assessment, Claimant's election to move at night without visibility constituted reckless and negligent operation of his machine. Combs said when he got to the front part of the machine it was locked up, but not the back. Claimant did not dispute this statement.

ORGANIZATION POSITION:

The Organization alleges a denial of fair and impartial hearing in that the hearing officer was not the individual to make the disciplinary decision in the case.

Claimant stated Foreman K. Harper called him on the radio and told him bump up and finish what little spiking Spiker 1 had left. He said he was not told to pin up and did not do it. It was pitch black, he said, stating he traveled about 50 to 75 feet without seeing anything then hit the crossing. He said he did not feel it was necessary to pin up at the time. He contended it is common practice to bump up short distances without going to travel mode.

The Organization notes the only light available to Claimant shined at his feet and did not illuminate enough area for him to discern a crossing. In its assessment, if the Carrier is going to require employees to work at night, it needs to provide adequate lighting.

DECISION:

Claimant in this case was working at night without adequate lighting to discern dangers such as a crossing. He could not and should not have assumed that no crossings were in the area. When told to bump up, he said he did not lock up or pin up his machine, but simply followed the instruction to move.

Combs testified that when he reached the area of the accident, the front part of Claimant's machine was pinned up but not the back where the nippers impacted. This testimony was not rebutted by the Claimant. The evidence is persuasive that Claimant did not lock up/pin up the entirety of his machine before moving.

The Board is aware of the practice of moving short distances without pinning up. However, we find such a choice to be careless and inattentive in the shroud of darkness.

The fact that Claimant was not told to lock up or pin up is certainly a consideration here; in all probability, the incident would not have happened had such an instruction issued. But at the end of the day, it is the Operator who is best able to assess the dangers inherent in moving without pinning up. Claimant was the one who could best evaluate the adequacy of the lighting. He stated at hearing that it was wholly inadequate for him to see a crossing. By his own admission, Claimant moved his machine in dangerous circumstances without taking adequate precautions.

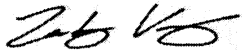
AWARD:

The claim is denied.

September 2, 2015

A handwritten signature in black ink, appearing to read "Patricia T. Bittel". The script is cursive and fluid.

Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, appearing to read "Zachary Voegel". The script is cursive and fluid.

Zachary Voegel, Labor Member

A handwritten signature in black ink, appearing to read "Donald J. Merrell". The script is cursive and fluid.

D. J. Merrell, Carrier Member