

PUBLIC LAW BOARD NO. 7585

**Case No. 39/Award No. 39
Carrier File No.: 10-13-0664
Organization File No.: C-13-D040-38
Claimant: J.M. Glascock**

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

FACTS:

On Sept. 13, 2013, the Carrier issued Claimant Glascock a Level S 30 Day Record Suspension with a three-year review period. The Carrier asserts Claimant violated MOWOR 10.3 by failing to properly secure authority while piloting a slot train and exceeding his limits. The Organization asserts the discipline is improper, and seeks rescission as well as a make whole remedy.

CARRIER POSITION:

Roadmaster K. Pickens testified that on the day in question, the Terminal Manager called and advised that the slot machine had gone out of its limits. Pickens went to the area and found the slot train with its Operator. He said he got statements from the employees. In his statement, Claimant said the Operator put the train in motion without his instruction, but did stop when he told him too. "By the time my jaw came back up from my knees, I instructed him to stop again after we had gotten out of our limits." The train rolled more than 155 feet before stopping.

Pickens acknowledged that the contractor is the one who operates the machine. Claimant admitted that as pilot, the movement of the machine is under his responsibility. In the Carrier's assessment, the case is simple: Claimant was piloting the slot train when it went outside the limits of its authority. Claimant was responsible for maintaining his authority and controlling the contractor.

ORGANIZATION POSITION:

The Organization maintains it was a violation of Rule 40 to deny Claimant compensation for attendance at the hearing. In addition, it asserts a fair and impartial hearing was

denied in that the Organization requested the evidence in advance of the investigation and nothing was provided.

Claimant said he stopped the train short of Chambers street, a control point. You have to have a CTC permit to proceed past it, he explained. He said he was working under R. Showalter's authority and heard Showalter talking to the Yardmaster. He said at that point, he changed channels and got his book ready. Then the contract Operator, J.L. Harvey, said "This is not Chambers Street, this says Knox," and released the brakes and rolled forward. Within seconds they were outside the limits.

Claimant maintained he had no way to stop the Operator, short of grabbing hold of him. "I told him to stop as soon as I was able," Claimant said. (TR 35) He said he could not believe the Operator took off without any instruction. According to Claimant, Showalter then said "That makes you want to kick my ass, don't you?" and bent over. Claimant said he got out and backed him up.

The Organization contends Claimant cannot be found in violation of the rules regarding track and time when he had no control over the movement outside limits; he never authorized it and stopped it as soon as he could.

DECISION:

The Board is not persuaded that a fair and impartial hearing has been denied in this case. There is no Rule 40 requirement that evidence be provided to the Organization in advance of the investigation. The Organization argues the Carrier violated its Rule 40 obligation to provide a fair and impartial hearing in that it failed to compensate the Claimant for his time spent in the investigation. The Board is not so persuaded; the terms of Rule 40 do not express a joint intent for such compensation. The Board's ruling in this respect is limited to an interpretation of Rule 40 and expresses no opinion about whether such an obligation exists under a separate provision of this Agreement or any other agreements.

Claimant did not have the controls of the machine. Though he was responsible for piloting it, the way to do this is by communicating with the Operator. In this case the Operator took off without waiting for instruction from Claimant or even asking him whether he thought moving forward would be a good idea. Claimant stopped him as soon as he gathered his wits. Though his reaction may not have been instantaneous, the Board does not find the slight delay to signify any sort of malfeasance or nonfeasance.

The Carrier's rules exist to admonish employees when they have ignored or violated important considerations toward a safe and productive workplace. Rules violations are properly penalized when a volitional action contrary to those rules is taken, as well as when negligent nonfeasance diminishes the effectiveness of the work place.

In this case there is evidence of neither. Claimant did not commit any offense; he took no action that could be deemed a rules violation. The Carrier would saddle him with

responsibility for the actions of another when Claimant controlled those actions as much as was reasonably possible. Claimant did nothing irresponsible in this case. As a result, his penalty cannot be justified.

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.

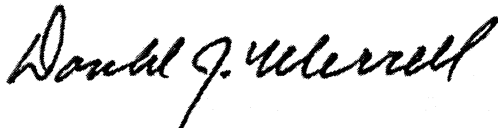
September 2, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member