

PUBLIC LAW BOARD NO. 7585

**Case No. 40/Award No. 40
Carrier File No.: 10-13-0662
Organization File No.: C-13-D070-20
Claimant: R.A. Wolford**

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

FACTS:

On Sept. 20, 2013, the Carrier dismissed Claimant Wolford for alleged failure to provide proper main track protection when he released the authority he was working under on August 15, 2013. The Organization challenges the propriety of the dismissal and seeks reinstatement and a make whole remedy.

CARRIER POSITION:

Roadmaster Jason Dye testified that on the day in question he supervised Claimant who was working as Track Inspector. Claimant was piloting the rail detector and was responsible for eight people. He was in charge of getting the track and time authorities. Dye said he got the red alert, meaning the entire work group was outside its authority.

The transcript of the radio conversation with the Dispatcher was entered into evidence and included the following statement from Claimant: "I, I, I don't know what happened here. It was in and out and I was trying to release the plant at Stronghurst and I showed released, I thought, and then I just released the wrong one."

Track and Time Authority is required under MOWOR 10.3. Claimant admitted he was out of compliance with this rule after he gave up his authority. The Carrier emphasized the importance of the rule in question, citing a fatality on a prior occasion where an employee occupied track without authority.

ORGANIZATION POSITION:

The Organization asked to review the documentary evidence in advance of the hearing and was not permitted to do so, prompting objections and an argument that a Rule 40 fair and impartial hearing was denied.

The Organization also maintained a fair and impartial hearing was denied because Claimant was not compensated for attendance at the investigation.

Claimant stated he had authority 22-79, 22-80 and 22-81, and endeavored to release 22-79 and 22-80. He was using the Smart Mobile Client, a computer with an air card. He released 22-79 and it went through. He then tried to release 22-80 but it did not want to communicate with the office. He happened to look down and it was flashing for the release of 22-81 instead of 22-80. He said he tried to cancel the release but it was too late. He then contacted the dispatcher to try and protect his gang. He asserted he did not knowingly give away his authority. When he got out to call the Roadmaster, he fell and hurt his ankle.

He explained that the Smart Mobile Client brings up a screen that lets you choose the authority you want to release. It asks if men and equipment are clear and then it asks if you are sure you want to release. When you click yes, it sends a signal to the Dispatcher and releases the authority.

In the Organization's view, the Smart Mobile Client was not working properly, and this was the cause of the lost authority. Without human voice contact, an employee must rely on an electronic process that in this case was spotty. In its assessment, the discipline taken was harsh and excessive. It points out that Claimant has been truthful and acted responsibly at every turn.

DECISION:

The Board is not persuaded that Rule 40 was violated, either by declining the Organization's request for an advance viewing of the documentary evidence or by the Carrier's refusal to compensate Claimant for 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 asserted he never got a copy of the release of 22-80. "... I think I got a little complacent, looking for it," he said, "and I didn't actually watch the number." He admitted he was ultimately responsible for the loss of authority. Though he did not remember being hurried, he said he was frustrated with the system. He admitted he immediately knew he had released the wrong authority when he hit the button. He said he stayed where he was until he got new authority.

The Smart Mobile Client has several steps before the release of authority goes through. The responsible person must first verify that people and equipment are not occupying the track about to be released, and then must again verify the intent to release the identified track. Claimant admitted he did not look carefully at the identified track before hitting the button to release it. In saying he happened to look down, he admitted he was not watching the screen. As a result, he saw the 22-81 identifier too late and could not retract the action.

These facts persuade the Board that Claimant was not being careful in his handling of the release. By his own admission, Claimant was frustrated. He was hitting buttons in his annoyance without verifying that he was in fact releasing the intended authority. This was careless and resulted in release of the very authority he and his eight men were relying on for protection.

The danger of occupying track without authority cannot be exaggerated. The Carrier was well within its rights to view this incident as extremely serious.

This was Claimant's second serious rule violation in 12 months and his third in two years. Each was an authority violation. Claimant has had the benefit of progressive discipline and has been afforded repeated opportunities to come to grips with the importance of handling track and time with extreme care. He has failed to demonstrate an ability to learn from his mistakes and perform safely in the future.

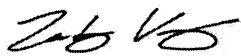
AWARD:

The claim is denied.

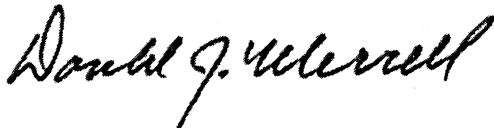
September 2, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member