

**PUBLIC LAW BOARD NO. 7585**

**Case No. 41/Award No. 41  
Carrier File No.: 11-14-0085  
Organization File No.: S-P-1799-G  
Claimant: Charles E. Taylor**

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

In September of 2013, Claimant Charles E. Taylor received a Level S 30-day Record Suspension for failure to insure that neither employees nor equipment occupy or foul the track unless the proper authority is in effect. The review period for this discipline was 36 months.

On October 10, 2013 Claimant Charles E. Taylor was the employee in charge at or near mile post 123.5 in the Seattle Subdivision. The Carrier alleges he granted permission for an Amtrak train to move through the limits of track bulletin Form B without first notifying the work group protected by the Form B. Because this incident occurred during the review period of prior discipline for the same rule violation, Claimant was dismissed. The dismissal was grieved and the grievance was processed through the parties' grievance procedure to the instant Board.

**CARRIER POSITION:**

Construction Roadmaster Shane Pendergraft testified he was on the work group protected by Claimant's Form B on the day in question. He said he heard Claimant clear Amtrak on the radio, so he grabbed a coworker and got off the tracks. Form B was his sole protection, he said. He recalled two work groups were working under the Form B, Nutter Corporation and his own.

Nutter provided a written statement to the effect that it was not notified about the Amtrak train, but was not on the track.

In a written statement taken the day of the incident, Claimant stated: "At approximately 12:30 pm, I was running form b 9416 from mp 123.3-123.8. I called a train through on a group that I had not yet cleared."

The Carrier maintains Claimant's actions constituted a violation of Rule 15.2, Protection of Track Bulletin Form B, which states that "A train must not enter the limits unless instructed by the employee in charge," and establishes the parameters of communications with the train. The Carrier also contends MOWOR 6.3.1 regarding occupying or fouling track was breached. The Carrier argues Claimant was required to contact all work groups on his Form B before clearing a train.

#### **ORGANIZATION POSITION:**

The Organization notes Claimant was removed from service before a hearing was held and argues this was an impermissible punitive measure under Rule 40. It also maintains Claimant's Notice of Investigation failed to specify the rules alleged to have been violated in contravention of Rule 40.

The Organization finds no violation of the cited rules. In its view, MOWOR 15.2 simply instructs on how to call through a train, which Claimant did. MOWOR 6.3.1 states in pertinent part: "When requesting authority or establishing protection, the employee in charge must ensure that equipment and employees do not occupy or foul the track until authority is received or protection is established." In the Organization's assessment, since Claimant maintained authority while the train when through, there was no violation of this rule.

Pendergraft admitted he was cleared after BNSF Train 5633 went through at 12:54, and went back onto the tracks without requesting authorization. He recalled it was hectic that day.

Claimant testified he contacted Pendergraft to clear for BNSF 5633, but did not call for him to clear for Amtrak 467 North because "there was an urgency put on not stopping trains." He admitted it was an oversight to not call. He claimed he did call Nutter.

In the Organization's view, there is nothing in the applicable rules that Claimant violated. Claimant cleared Pendergraft then Pendergraft failed to ask permission to go back onto the tracks.

The Organization argues dismissal was too severe an action for the offense concerned, particularly when Claimant was being pressured to keep the trains moving. Further, there was no coaching or training after the earlier Level S violation, the Organization points out, noting there was therefore no opportunity for improvement.

#### **DECISION:**

The Board is not persuaded that Claimant's removal from service prior to investigation constituted a violation of Rule 40. Rule 40 provides for prehearing removal in cases involving serious infractions of the rules. Conscious or reckless indifference to the safety of others is a rules violation which can result in dismissal on first offense. The Carrier

must make removal decisions based on limited information. In this instance, it was reasonable for the Carrier to consider this incident as serious; the removal did not contravene Rule 40.

Rule 40 states a charged employee must receive written notification of investigation which specifies the charges to be investigated. Claimant's notice states: "Alleged violations include but are not limited to failure to properly brief and obtain acknowledgement from all employees when the method of on-track safety was about to be released, and failure to comply with On-Track Safety Policies, Main Track Authorization procedures, and Protection by Track Bulletin Form B Procedures." These allegations are specific enough to meet the requirements of Rule 40.

MOWOR 6.3.1 states: "When requesting authority or establishing protection, the employee in charge must ensure that equipment and employees do not occupy or foul the track until authority is received or protection is established." This language gives the employee in charge responsibility for keeping employees off the track and safe from passing trains. To read it any other way is to deny the fundamental purpose of the rule.

Though MOWOR 15.2 does not specifically require the employee in charge to call Form B work groups when a train is cleared through, it does give the employee in charge responsibility for the safety of employees fouling the tracks: "Trains and employees must not enter the limits unless instructed by the employee in charge." As General Manager Ness explained in his January 20, 2014 letter to the Vice Chairman, "His sole performance was to protect two workgroups from the movement of trains and equipment."

Despite prior discipline for failing to insure employees or equipment did not foul the track without authority, Claimant failed to tell employees who were fouling the track that a train was coming through. This failure demonstrates indifference to the safety of others and is very serious. Under the applicable Policy for Employee Performance Accountability, violation of any work procedure that is designed to protect employees constitutes a serious offense. In view of these facts, the Carrier has provided substantial evidence to support the dismissal.

**AWARD:**

The claim is denied.

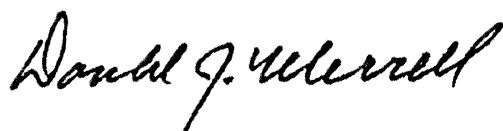
July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member