

**PUBLIC LAW BOARD NO. 7585**

**Case No. 43/Award No. 43  
Carrier File No.: 10-14-0205  
Organization File No.: C-14-D040-14  
Claimant: Bob D. Power**

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

On February 13, 2014, Claimant Bob D. Power allegedly failed to follow lockup pinup procedures before instructing that BNSF machine BN5400427 be moved, resulting in damage to the wayside detector at milepost 10.5 on the St. Joseph Subdivision in Missouri. This was deemed to have been in violation of EI 14.3.3-Maintaining Roadway Equipment and MOWOR 1.19-Care of Property. Claimant was issued a Standard Formal Reprimand with a 1-year Review Period.

**CARRIER POSITION:**

Roadmaster Martin Eador testified that Claimant Power and Mr. Frank Roberts were on a surfacing gang assigned to work in his area on the day in question. Eador stated he received paperwork regarding a wayside detector being knocked off its mountings. He said he phoned Claimant, who was the surfacing gang foreman, to find out what happened. He received statements to the effect that Claimant told Tamper Operator Frank Roberts to run off because a liner malfunction had been noted and Claimant wanted to inspect the track. The alignment was fine, so Roberts was instructed to pull ahead. Claimant noticed Roberts had left the clamps in the down position. Subsequently, the wayside detector was found damaged, and repairs totaled \$20,702.

Though Claimant was not operating the tamper at the time of the incident, the Carrier considered him a principle because of his responsibility as foreman. In its view, the foreman is responsible for preventing mishaps, and his directions to the gang must ensure safety. In its view, Claimant has responsibility for the tamper movement.

**ORGANIZATION POSITION:**

Claimant stated he had been a surfacing gang foreman for 12 years, with 40 years of service. He said on the day in question, he was in a truck checking the surface to be

sure it was correct, when a possible fault with the liner was noted. In accordance with accepted procedure, he told the 6700 to runoff so they could look at the track profile. When Roberts pulled ahead, Claimant said he noticed the rail clamps were in the down position and found the damage to the detector. He confirmed that before moving to a new location, he usually helps to buggy up for safe travel. This was not done, he explained, because they were not sure whether they would need to stay and reline the track. He admitted he was the one to instruct Roberts to pull ahead, and when he did, the clamps were noted to be down. He said he had not been trained on the 6700, but specialized in track structure. Having worked with Roberts before, Claimant knew him to be experienced and familiar with the territory.

Roberts stated he learned of the problem when Claimant told him about the detector. Subsequently, Roberts' supervisor contacted him for statements and a urinalysis. He said Claimant generally spots him at crossings due to limited visibility from the tamper cab.

Tamper Operator Bob Bromley stated he worked with Roberts and Claimant on the day in question. He said you can see behind the machine reasonably well, but not in front of it. Radio guidance is helpful, he explained. He confirmed that when Roberts was asked to move forward, the machine was still in working mode, with buggies out.

Procedural flaws prohibit execution of the penalty, in the Organization's view. It notes the discipline was issued by Director of Administration Darren Compton, who did not attend the investigation and therefore could not fairly and impartially determine the propriety of the discipline. It sees duplicity in the Carrier's initial assertion that Claimant moved the machine versus its later contention that he instructed Roberts to move it.

The Organization contends that Roberts was given a urinalysis, but not Claimant because Claimant was not responsible. Eador confirmed that Roberts was running the machine and Claimant had other duties. Since Claimant was not operating the machine, the Organization concludes he did nothing wrong. It notes EI 14.3.3 is directed only at the operator and therefore could not have been violated by Claimant.

The rules cited by the Carrier only apply when the tamper is in travel mode, the Organization argues, and that condition does not exist in this case. The Organization finds the Carrier's position untenable because testimony does not establish that the damage to the detector occurred on the day in question, Claimant was not at the controls of the tamper and Eador's testimony was second-hand in that he was not present at the time of the incident

#### **DECISION:**

The facts in this case are not in dispute; it is clear that Roberts was the machine operator and Claimant told him to move forward so the tracks could be checked. No one saw the impact to the wayside detector. There were no credibility determinations to be made in evaluating the testimony. Hence, the fact that Compton did not attend the investigation had no impact on the fairness or impartiality of the discipline decision.

The Organization interprets EI 14.3.3 to apply only when a machine is being moved from one location to another. The rule states as follows:

EI Rule 14.3.3-Maintaining Roadway Equipment, Safety Precaution # 9 states:

9. For track travel, Operators must:

- Follow all applicable safety rules.
- Shut down all moving components.
- Secure and lock all working components in the stowed position, such as wings, workheads, clamp frame, plows, brooms, cutter heads, broom assemblies, and hoisting and swing components.

The tamper does its work while moving slowly down the rail bed. Hence 'track travel' as used in the rule, does indeed refer to relocation of the tamper as opposed to its working mode. It was not a violation of this rule to keep the tamper in working mode when inspecting track for potential rework.

The Board does not find any creditable controversy about when or how the wayside detector was damaged. The report came in shortly after the 6700 was moved with buggies deployed. More likely than not, the 6700 was the cause of the damage.

MOWOR 1.19 states "Employees are responsible for properly using and caring for railroad property." This rule gives all employees responsibility for safeguarding railroad equipment. As a foreman, Claimant certainly shared in this responsibility.

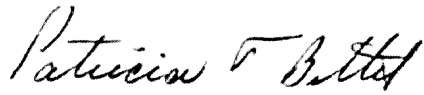
The question raised is whether he breached a duty when the tamper was moved while in working mode. As foreman, Claimant was generally responsible for the safety of his gang operations. In this case, Claimant not only carried that general responsibility, but he specifically instructed Roberts to move the tamper forward. In so doing, he was accountable for the safety and propriety of the instructions he gave. He could easily see that the 6700 was in working mode. He was also responsible for knowing the territory and for protecting any equipment, such as a wayside detector, that could be damaged by moving the tamper in that condition.

It follows that there is substantial evidence that MOWOR 1.19 was violated. This is a Standard Violation.

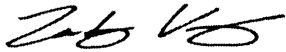
**AWARD:**

The claim is denied.

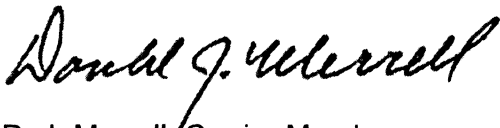
July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member