

**PUBLIC LAW BOARD NO. 7585**

**Case No. 44/Award No. 44  
Carrier File No.: 10-14-0206  
Organization File No.: C14-D040-15  
Claimant: Frank R. Roberts**

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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 Frank R. Roberts allegedly failed to follow lockout /pinout procedures before moving BNSF Machine BNX5400427, resulting in damage to wayside detector at mp 10.5 on the St. Joseph Subdivision, Missouri. This was deemed to have been in violation of EI 14.3.3-Maintaining Roadway Equipment and MOWOR 1.19-Care of Property. As a result he was issued a Level S 30-day Record Suspension with a one-year review period.

**CARRIER POSITION:**

Roadmaster Martin Eador testified that Claimant Roberts and Mr. Bob D. Power 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 Power, who was the surfacing gang foreman, to find out what happened. He received statements to the effect that Power told Claimant to runoff. A liner malfunction had been noted and Power wanted to inspect the track. The alignment was fine, so Claimant was instructed to pull ahead. Power noticed Claimant had left the clamps in the down position. The wayside detector was found damaged, and repairs totaled \$20,702.

The Carrier maintains this incident was avoidable. In its view, EI 14.3.3 on traveling applies and the tamper should have been bugged up. It faults both the foreman and the operator with failure to take this important precaution.

**ORGANIZATION POSITION:**

Power 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 Claimant to runoff so they could look at the track profile. When Claimant pulled ahead, Power 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 Claimant to pull ahead, and when he did, the clamps were noted to be down. Having worked with Roberts before, Claimant knew him to be experienced and familiar with the territory.

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

Tamper Operator Bob Bromley stated he worked with Claimant and Power 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 Claimant was asked to move forward, the machine was still in working mode, with buggies out.

The rules cited by the Carrier only apply when the tamper is in travel mode, the Organization argues, a condition not applicable to this case. The tamper was not traveling but was only moving forward for work. 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 only following instructions 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 Claimant was the machine operator and that Power 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 is designed to replace track while moving slowly; it does its work while inching down the rail bed. Hence 'track travel' as used in the rule, does indeed refer to relocation of the tamper as opposed to allowing it to move in 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 tamper was not taken out of working mode when the incident occurred. It is not reasonable for the Carrier to expect the entire piece of equipment to be bugged up every time it needs to inch down the track.

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. At no time did Claimant cease to carry this responsibility. However, the Organization's argument that he was only following instructions serves as a strong mitigating circumstance. He was relying on the ostensible evaluation of his foreman as to the safety of the situation. As the operator, he did not relinquish responsibility for operation of his machine. He was familiar with the territory and should have been alert enough to question movement in that area with the clamp in the down position. In consideration of the mitigating circumstances involved, the penalty imposed by the Carrier was unreasonably severe.

**AWARD:**

The claim is sustained in part. The discipline imposed shall be reduced to a Standard Reprimand with a 1-year Review Period. Claimant's record will be adjusted to reflect this modification.

**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.

July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member