

PUBLIC LAW BOARD NO. 7585

**Case No. 47/Award No. 47
Carrier File No.: 10-14-0247
Organization File No.: C-14-D040-18
Claimant: Karl J. Prebstle**

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

FACTS:

On April 22, 2014, Claimant Karl J. Prebstle was assessed a Standard Formal Reprimand with a 1-year review period for allegedly violating MOWOR 6.3.1 Main Track Authorization. The charge was that he failed to notify all EIC's holding joint overlapping authorities prior to fouling Main 2 between CP 176 and Romeo near Lemont on the Chillicothe Subdivision in Illinois.

CARRIER POSITION:

Roadmaster in Chicago Corwith, Aaron Selph, stated that on February 11, 2014, he planned to ride track with Track Inspector Karl J. Prebstle. He related that Claimant Prebstle got track and time on Main 2 authorized between Romeo and CP 176. It was joint with Ramiro Ramirez and Michael Snoreck. According to Selph, when he proceeded to Ramirez's working limits, he learned that Claimant had not briefed Ramirez to establish the working limits. He subsequently received a call that this was a Critical Decision failure and they were removed from service for the remainder of the shift.

Claimant Prebstle recalled that after he got his track and time, he first called Ramirez on the radio, then on the phone, but got no answer. He then called Snoreck and established a briefing. He said he asked Snoreck to give Ramirez the briefing and Snoreck said Ramirez was nearby and he would relay the briefing to him. According to Claimant, Snoreck said "Ramiro is right by me. I'll talk to him." Claimant maintained that he thought this briefing was sufficient though he was uncertain whether both Snoreck and Ramirez were both EIC's.

Under MOWOR 6.3.1, Claimant was required to contact the employee in charge of each authority.

When an employee receives 'joint authority,' the employees must not occupy the overlapping limits until employees and/or trains listed on that authority are contacted. A job briefing must determine the location of all working limits. The job briefing must designate only one employee as the EIC of overlapping working limits.

When an employee receives an authority that overlaps a track bulletin Form B, the employee must not occupy the overlapping limits until the EIC of the track bulletin Form B is contacted.

Claimant, when hy-railing, encountered Ramirez, and Claimant had to back up before Ramirez could get off the track. The Carrier maintains this clearly shows that Ramirez was not expecting Claimant to come along; hence, there was no briefing.

In addition to Claimant's discipline, he was also required to make a presentation. The Carrier states such presentations are not unusual. It also notes nothing in the parties' labor agreement requires that the hearing officer be the person to actually assess discipline. In the Carrier's view, possible differences in the discipline of exempt versus union employees are irrelevant to the justification for the discipline imposed in this case.

ORGANIZATION POSITION:

The Organization contends the requirement of a fair and impartial investigation was breached when the hearing officer did not make the disciplinary decision. Further, the discipline taken included a requirement that Claimant make a presentation to other employees, a punitive measure found nowhere in the rules. In its view, when the employee was given an investigation but not paid for his time to attend, he was pre-punished. In its view, the hearing officer was not fair or impartial in the way he conducted the hearing.

The Organization contends that even though the Policy for Employee Performance Accountability (PEPA) on its face applies to all employees, the Carrier is much more harsh in its treatment of union employees as opposed to exempt employees. It notes Selph had another Critical Decision failure, yet retained his employment.

In the Organization's view, MOWOR 6.3.1 does not require that each EIC be contacted and does not prohibit the relay of a briefing. Nowhere in the rule is there a requirement that the notification be direct, it argues.

Claimant denied that he did anything that constituted a marked disregard for the Carrier's rules. Since the rules on their face state they exist to deal with instances of "marked disregard," the Organization maintains they don't apply. In its assessment, Claimant does not deserve to be punished, and any punishment would go against the PEPA policy.

As to the requirement that Claimant make a presentation to other employees, the Organization notes this was a practice that occurred under a prior policy titled Alternative Handling Plan. There, a safety presentation was in lieu of disciplinary action.

The Alternative Handling Plan was revoked by the Carrier. In the Organization's view, this means the discipline in this case constitutes double jeopardy.

DECISION:

The Board is not persuaded that the disciplinary decision in this case had to be made by the hearing officer. The facts of the case are not heavily contested. Claimant used Snoreck to relay his briefing; the Carrier finds this to be in violation of MOWOR 6.3.1.

The argument that a presentation to other employees constitutes a punitive measure must fail. Even when used in lieu of discipline under the Alternative Handling Plan, requiring a presentation from an employee was not punitive. The discipline taken was a Standard Reprimand with a 1-year review period. PEPA does not recognize presentations as punitive measures.

The Employer's rule in this case is clear. It prohibits employees with 'joint authority' from occupying overlapping limits until employees and/or trains listed on that authority are contacted. The TMDS Inactive Track Authority issued to Claimant listed joint authority with Ramino Ramirez and Mike Snoreck. Claimant knew Snoreck was contacted; he briefed him. Then he relied on Snoreck to brief Ramirez. This reliance meant he did not know whether Ramirez was actually briefed. His failure to brief Ramirez was out of compliance with his responsibility. MOWOR 6.3.1 requires that at least one other employee in a work group read and understand the authority before fouling the track.

The Organization correctly points out that MOWOR 6.3.1 does not specifically say require notification of every employee. However, it was Claimant's responsibility to conduct a briefing, and he left Ramirez out of his briefing in contravention of his responsibility.

The Carrier's Policy for Employee Performance Accountability states:

Rules compliance is essential to safe operation, and we expect everyone at BNSF to consistently comply with our safety and operating rules. For those rare instances where an employee shows a marked disregard for BNSF rules, procedures and safety, this Policy provides a process to enforce BNSF and federal safety requirements.

This policy is intended to address rule and policy violations in a consistent and fair manner so that every member of the BNSF community has an equal opportunity to achieve his or her full potential.

The Organization maintains the rules, by their terms, apply equally to all employees, while union employees are disciplined more harshly than exempt employees. In support of this argument, the Organization sought an admission from Selph as to the discipline he received for this as well as a subsequent Critical Decision failure. The hearing officer did not require Selph to answer, thereby obstructing an Organization argument of disparate treatment.

Under some circumstances, this could constitute a refusal to allow introduction of relevant evidence in contravention of Rule 40. However, Selph's was not a member of the bargaining unit. In addition, his situation was not the same as Claimant's. Claimant was the one with responsibility for complying with MOWOR 6.3.1. He was the one who was issued the authority, who attempted to contact Ramirez, who did contact Snoreck and who instructed Snoreck to relay the briefing. Selph was on the phone and was not even aware of Claimant's actions. As a result, his situation is entirely distinguishable and disparate treatment cannot be shown.

At the end of the day, Claimant was responsible for contacting both Ramirez and Snoreck. He only contacted one of them and proceeded down the track without knowing whether Ramirez had been briefed. The Carrier reasonably concluded that this constituted a violation of MOWOR 6.3.1.

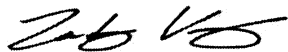
AWARD:

The claim is denied.

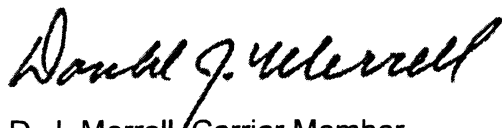
Dated: July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member