

PUBLIC LAW BOARD NO. 7585
CARRIER FILE NO. 10-16-0353
ORGANIZATION FILE NO. C-16-D070-12
CLAIMANT: J. K. Thompson

Parties To Dispute:

Brotherhood of Maintenance of Way Employes Division & BNSF Railway

Arbitrator:

Patricia Thomas Bittel

Statement of Claim: *The Organization alleges that BNSF violated the Agreement when Claimant was dismissed as a result of a formal investigation held on August 8, 2016, for Claimant's violation of MWOR 1.6 Conduct, MWOR 6.2.1 Train location and MWOR 6.3.1 Main Track Authorization when Claimant failed to properly read the authority when briefing with his crew after receiving authority behind a train, which resulted in a near collision with a train. As a result of this alleged Agreement violation, the Organization is requesting that the Claimant be reinstated and the discipline removed from Claimant's record.*

Background Facts:

On July 26, 2016 Claimant was working as a Gang/Section Foreman on the TSEC0363 Section Gang on the Creston subdivision. He was granted authority behind Train 8767. Claimant's truck stopped 3000 feet away from it. The Carrier deemed this a near collision. It is noted that in June of 2016 Claimant was issued a Level S 30-day record suspension for failure to wear a seatbelt while operating a vehicle.

During the formal investigation, Claimant admitted that the PDF said his authority was behind 8757 East but he did not read it. He acknowledged that before fouling the track he is supposed to understand his authority and if behind a train, communicate with that train. The Organization maintains the train dispatcher failed to inform the Claimant of a train in the area when he arrived at the pre-determined location and advised he was ready to copy track authority. It maintains the dispatcher had already cleared the train through the limits when he issued the track authority to the Claimant.

In the view of the Organization, it was the train dispatcher's responsibility to make sure the Claimant understood there was a train headed towards him. The Organization also argues that there were problems with the Smart Mobile Client, and no train was indicated on the graphic display. It contends Claimant told the Dispatcher where he was going but the Dispatcher failed to make any mention whatsoever of a train. Indeed, the Dispatcher failed to make any mention that Claimant's authority would be behind a train.

Opinion of the Board:

The Board can find no denial of a fair and impartial hearing in this case. In view of his prior discipline, it cannot be said that the discipline was unreasonable. Claimant's failure to properly read and digest his authority was serious in nature. The Organization is right in that the incident would not have occurred had the dispatcher advised Claimant of the approaching train. But by the same token, the incident would not have occurred without Claimant's failure to properly read his authority. It was the combination of mistakes that created the unsafe situation. For this reason, the Board cannot blame the dispatcher alone for the event.

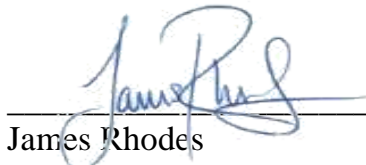
Though Claimant contended the TMDS system malfunctioned and failed to display the presence of the train, there was no corroboration for this assertion. In any event, the Carrier's conclusion that Claimant held responsibility for the incident is well founded; it would not have happened without his inattentiveness. A critical aspect of his authority was that it was to be behind a train. Because he did not carefully read his authority, he did not know a train was coming and fouled the track. The Carrier was within its rights to consider this a serious offence. Insofar as Claimant recently had received Level S suspension, the Carrier's dismissal decision was not a breach of the Agreement.

AWARD:

The claim is denied.



Patricia Thomas Bittel
Chair and Neutral Member



James Rhodes
Carrier Member



Zachary Voegel
Labor Member

Dated: January 28, 2019