

PUBLIC LAW BOARD NO. 7585
CARRIER FILE NO. 10-17-0015
ORGANIZATION FILE NO. C-17-D040-1
CLAIMANT: I. S. Sanchez, Jr.

Parties To Dispute:

Brotherhood of Maintenance of Way Employes Division & BNSF Railway

Arbitrator:

Patricia Thomas Bittel

Statement of Claim: *The Organization asserts the Agreement was violated when Claimant I. S. Sanchez was issued a Level S 30-day Record Suspension and one-year review period on September 21, 2016 after an investigation found he was in violation of MWOR 6.3.2, 6.19 and 1.6 for failure to provide proper track protection.*

Background Facts:

On July 7, 2016 Claimant was working as a Flagger for a construction project on the Council Bluffs Subdivision. The Carrier maintains that during his shift, Claimant left his position without notifying employees not to foul the track while he was gone since there would be no protection. Claimant admitted he did not notify the employees that he was leaving. In the view of the Carrier, this evidence suffices to establish the offense in question.

The Organization characterizes the suspension as excessive and arbitrary. It notes Claimant left the area of a locked switch to investigate train movement. He advised Roadmaster Gibson, who acknowledged his departure. In its view, he cannot be faulted for Gibson's failure to assist. Instead, Gibson remained in his vehicle and did nothing to help. It was Gibson who asked for the location of CG04, and when it could not be found, Claimant went to its last known location. The Organization maintains Roadmasters Gibson and Bertoni instructed Claimant to improperly place a derail on the main line, and when he did, he was disciplined yet they were not. Gibson stated he did not recall acknowledging Claimant's departure.

Opinion of the Board:

Gibson's failure to recall Claimant's notification of departure does not constitute a denial that this occurred. He simply did not recall whether it did or not. Claimant's recollection was specific. When he was unable to locate CG04 per Gibson's request, he decided to go look for it and so notified Gibson. Though the Board credits this testimony, it does not absolve the Claimant.

The Carrier does not fault Claimant for going to find CG04; it faults him for failing to tell the employees he had been protecting that he was leaving them unprotected so they should avoid fouling the track. The thrust of the Claimant's argument is that because Gibson knew he was leaving, it was up to Gibson to assist by informing the employees. The Board simply does not agree. It was Claimant who was providing these employees with their protection, not Gibson. Though it would have been better had the two discussed the issue of notifying the employees, without doing so it was logical for the Carrier to consider this the responsibility of the Claimant. Rather than telling employees not to foul the track, he simply left. The Board find the Carrier was within its rights to expect Claimant to notify employees when they went from protected to unprotected status.

AWARD:

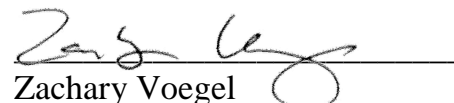
The claim is denied.



Patricia Thomas Bittel
Chair and Neutral Member



James Rhodes
Carrier Member



Zachary Voegel
Labor Member

Dated: January 28, 2019