

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 84
Carrier File No.: 10-18-0144
Organization File No.: C-18-D040-20
Claimant: S. E. Howard

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

STATEMENT OF CLAIM:

The Organization alleges the BNSF violated the Agreement when Claimant was disciplined for violating MWOR 6.3.1 "Track Authorization" for being foul of main track without proper authority on January 10, 2018 at or near Bridge 37.4 on the Pikes Peak Subdivision while working as Structures Foreman.

CARRIER POSITION:

On January 10, 2018, Claimant was working as Structures Foreman of a gang that was working on a bridge. He misidentified the track they were working on as Track 1, but requested authority for Track 2. The Carrier maintains track authority is crucial to safety, and points to a fatality which occurred when track authority was breached. It insists it has more than met its burden of providing substantial evidence.

ORGANIZATION POSITION:

The Organization contends that Claimant's gang was cleaning sidewalks, and did not need track authority for their work. Though Claimant obtained authority for the wrong track, the Organization asserts this does not establish a rule violation of any sort. Since they did not need track authority in the first place, Claimant's actions in attempting to obtain track authority were superfluous, and his mistake in doing so was inconsequential. The Organization insists all work performed by Claimant's gang was outside the four-foot fouling line of the track.

DECISION:

The Carrier's witness was Supervisor of Structures James O'Brien. He testified that he received a call from Foreman Howard stating that the dispatcher had told him to call and advise that his gang had obtained authority on main track 2 when the bridge where they were actually working was on main track 1. Claimant did not become aware of the misplaced authority until a Track Inspector and Herzog went by on track 2. This event prompted an exchange with the dispatcher. Though O'Brien was not present while the employees were working without authority, he stated he relied on the employee's assessment that they needed added protection and were concerned with their sight distance.

No witness testified that the gang ever actually fouled the track. No witness testified that the gang's work could not have been performed without fouling the track. O'Brien admitted the employees were not foul of the track when he arrived. He acknowledged they were cleaning sidewalks and he did not know if they fouled the track. More importantly, he acknowledged that the gang could complete their tasks without fouling the track. Howard testified without equivocation or rebuttal that the work was indeed performed without fouling track. TR 43 The task was to clean the sidewalks which were a safe distance from the track. Structures Truck Driver Zachery Nelson confirmed this testimony. Both he and co-worker J. Caraveo testified that authority was not needed but was preferable so a train would not sneak up on them going at speed.

There is no evidence that the employees in question fouled or needed to foul track. Claimant was "hereby assessed a Level S 30 Day Record Suspension for being foul of main track without proper authority on January 10, 2018 at or near Bridge 37.4 on the Pikes Peak Subdivision while working as Structures Foreman." The Carrier has failed to provide substantial evidence to sustain this allegation.

AWARD:

The claim is sustained in full. The Carrier shall immediately remove the discipline from Claimant's record, with seniority, vacation and all other rights unimpaired and make him whole for all time lost as a result of this incident.

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.

Dated: February 13, 2020

A handwritten signature in black ink, reading "Patricia T. Bittel". The script is cursive and fluid.

Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, reading "Zachary Voegel". The script is cursive and stylized.

Zachary Voegel, Labor Member

A handwritten signature in blue ink, reading "Samantha Rogers". The script is cursive and elegant.

Samantha Rogers, Carrier Member