

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 99**  
**Carrier File No.: 10-19-0252**  
**Organization File No.: C-19-D040-19**  
**Claimant: M. Ward**

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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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**STATEMENT OF CLAIM:**

The Organization alleges that BNSF violated the Agreement when Claimant was disciplined as a result of a formal investigation held on April 17, 2019 for Claimant's violation of EI 13.3.3 "Maintaining Roadway Equipment" for his failure to lock and pin up the shaker table on the back trailer machine which then bled down during the trip from Caldwell, TX to Somerville, TX and hit the ground breaking both leveling arms on March 8, 2019 at MP144.6 on the Galveston Subdivision.

**CARRIER POSITION:**

On the day in question, Claimant was operating a TLU machine. It was Claimant's responsibility to make sure the machine could travel safely, but he forgot to verify that the pins were in place. As a result, the shaker table bled down and both stabilizing arms were broken.

In the Carrier's view, this was a clear case of negligence resulting in damage to Company property.

**ORGANIZATION POSITION:**

The Organization argues that the discipline was untimely under Rule 40 of the Agreement: the investigation was conducted on April 17, 2019. Though the disciplinary letter was dated May 17, 2019, it was not available for pick up until May 20. The Organization calculates that 33 days passed between the Investigation and receipt of the disciplinary decision, in excess of the 30-day deadline contracted for between the

parties. It notes that under Rule 40(D), "A decision will be rendered within thirty (30) days following the investigation, and written notice thereof will be given the employee, with copy to the local organization's representative."

In addition, it notes the General Chairman's letter was dated June 17, 2019. The Carrier's declination letter was dated August 15, 2019 and was not received until August 19, 63 days after June 17. The Organization asserts this too was in violation of the Agreement.

On the merits, the Organization deems the discipline in question to be excessive and arbitrary. It asserts the TLU machine and the shaker table are two separate units, and Claimant was only responsible for the TLU machine, not the shaker table attached to it. It contends there was no evidence that Claimant had been trained on the shaker table, and there were multiple operators of the TLU machine in question.

### **DECISION:**

The disciplinary decision was appealed by letter dated June 17, 2019. The Company's declination letter was dated August 15, 2019 and was received on August 19, 2019. The Organization protests that the declination was untimely, and that the Agreement requires the grievance to be allowed as presented. The provision at issue is Rule 42(A), stating:

- A. All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Company authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reason for such disallowance. If not so notified the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances.

The language of this provision is both mandatory and precise. A person or entity can only be deemed "notified" when they are in receipt of actual notice of the declination. One cannot be "on notice" of information that is in the mail, undelivered. Had the parties intended the issuance of a letter to be the critical factor in determining timeliness, they would have said so. Instead, they made the critical factor to be actual notification. Receipt of General Manager J. Thompson's declination letter did not occur until August 19, 2019. The writing or mailing of a letter does not constitute 'notification.' The declination letter was not received until 63 days following the General Chairman's June

17, 2019 letter. As such, the parties' Agreement mandates that the grievance be allowed as presented. The case being resolved on this basis, the Board does not need to address other arguments made of record.

**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. Lost overtime shall be compensated at the overtime rate. Any discipline current at the time of his discipline, including any on-going review period, shall resume in applicability to the extent of its remaining duration at the time of his dismissal. Any other claims not expressly granted by this Award are hereby denied.

**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: November 25, 2020



Patricia T. Bittel, Neutral Member

***Zachary C. Voegel***

Zachary Voegel, Labor Member



Samantha Rogers, Carrier Member