

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 1

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION

v.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-11-0190
Organization File No. 210-13N1-1137

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on July 13, 2011 when it assessed Claimant, Michael Talley, a Level S 30-day Record Suspension, with a 3-year review period, for alleged violation of Maintenance of Way Operating Rule 2.14.2-Before Reporting Clear of Authority Limits, for alleged failure to report multiple work groups clear of authority when releasing track authority while working as Foreman on the Conroe Subdivision.
2. As a consequence of the violation referred to in part (1), 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 account of this incident.

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7590 has jurisdiction over the parties and the dispute involved herein.

Claimant received a letter dated May 6, 2011, which provided in pertinent part:

You are hereby notified to attend an investigation meeting scheduled at 1000 hours on Thursday, May 19, 2011, at the Roadmaster's Office, . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to report multiple work groups clear of authority on Track Warrant 820-14, April 21, 2011 at approximately 1330 hours while working as Foreman with Surfacing Group TSCX 0227 on the Conroe Subdivision while releasing track authority, in violation of Maintenance Of Way Operating Rule 2.14.2, Before Reporting Clear of Authority Limits.

That matter was continued by agreement until June 22, 2011, for hearing. Following the hearing, Claimant was sent a letter dated July 13, 2011, which provided in relevant part:

As a result of the investigation held on June 22, 2011, you are hereby assessed a Level S 30 Day Record Suspension for your failure to report multiple work groups clear of authority on Track Warrant 820-14 on April 21, 2011 while releasing track authority at approximately 1330 hours while working as Foreman with Surfacing Group TSCX0227 on the Conroe Subdivision. In addition, you are being assessed a Three (3) Year Review Period that commences on July 13, 2011. Any rules violation during this review period could result in further disciplinary action. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MOWOR 2.14.2 Before Reporting Clear of Authority Limits.

In assessing discipline, consideration was given to your personnel record. The discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability.

The applicable Rule provides:

2.14.2 Before Reporting Clear of Authority Limits

Before a field employee reports clear or releases a portion of authority limits, and the Train Dispatcher/Control Operator accepts the information, the following must occur

- The employee will provide their name or other identification and the authority number to the Train Dispatcher/Control Operator.
- The Train Dispatcher/Control Operator will have the required form or computer screen displayed for data entry and confirmation.
- The employee will inform the Train Dispatcher/Control Operator that all employees and multiple work groups using the authority are clear of track(s).
- The Train Dispatcher/Control Operator and field employee must carefully match the verbally transmitted information against the authority form to ensure the information matches and is correct.

The Organization points out that the transcription between Claimant and the dispatcher is incomplete. Further, the Rule was followed and all of the pertinent information required for releasing track authority was followed. The Organization continues that a comparison of the Rule and the transcript clearly establishes that Claimant followed the rules for reporting clear of an authority because Claimant identified himself and the authority to be released, and at the dispatcher's prompting, agreed that that all work groups were clear.

Although the transcript is incomplete at the exact moment that "multiple work groups" should appear, it is obvious both the accused employee and dispatcher were clear on what was being discussed. The rule does not specify the order by number or alphabet, nor does it stipulate that

the employee must offer up the information first. It simply says that "the employee will inform". To inform is defined as "to impart information or knowledge". The Organization concludes that according to the strict definition of the Carrier's rules, Claimant followed MOWOR 2.14.2. The Claimant is a Fifty (50) year old employee with Twenty-Seven (27) years of service and the discipline is inappropriate to the charged conduct.

The Carrier counters that Claimant admitted that he did not say the words required by the Rule that "all employees and multiple work groups using the authority are clear of the track or tracks." Therefore, the Claimant was not in compliance with the Rules. He admitted the violation and, when there is an admission of guilt, there is no need for further proof and the only remaining question is the degree of discipline. The discipline was appropriate to the misconduct.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

This Board has carefully reviewed the evidence. The following appears at page 13 of the transcript:

AARON WHITNEY:

Did Mr. Talley and the Train Dispatcher carefully match verbally transmitted information against the authority form to ensure the information matches and is correct?

KENDALL FOLEY: The Dispatcher received all the correct information that he repeated before releasing that authority.

BRIAN POSTON: Ms. Foley, based on that transcription did the Dispatcher have all the information they needed to release that authority?

KENDALL FOLEY:

They had the information but he did not repeat, he did not say multiple work groups were repeated and the Dispatcher has to say, has to verify all the same information that we have to say, so, and they are to repeat back saying included the multiple work groups were uh clear of the authority limits.

The following appears at pages 18-19 of the transcript:

BRIAN POSTON: When the Dispatcher asked you if all men and equipment were clear did you supply them with that information that yes, they were all clear?

MICHAEL TALLEY: That's correct, I, will I, I uh acknowledged with the Dispatcher. I didn't say it in my own words but I did acknowledge it with the Dispatcher.

BRIAN POSTON: That, that was a correct statement the Dispatcher made?

MICHAEL TALLEY: That's correct, that was a correct statement.

AARON WHITNEY:

Is anywhere in the rules, Maintenance of Way Operating Rules say, 2.14.2, does it say that if you don't have multiple work groups that you do not have to communicate that to the Dispatcher?

MICHAEL TALLEY:

Uh, no, but there was a spot in there that said it was not uh legible for him to hear on that tape transcript, and I did say it all he said.

A Carrier witness agreed that the Dispatcher received all the information he needed to release the authority. According to the Carrier's argument, the rule required Claimant to specifically state that multiple work groups were clear of the authority limits. The cited rule requires that "the employee will *inform* the Train Dispatcher/Control Operator that all employees and multiple work groups using the authority are clear of track(s)." Employees holding track authorities have a duty to ensure that all work groups—their gang and other gangs—are in the clear and that information is properly communicated to the Dispatcher before releasing the track authority.

The evidence shows that the dispatcher asked Claimant a leading question about whether the men and equipment were clear. Claimant answered in the affirmative.

On this record, the Claimant did properly inform the dispatcher that all personnel and equipment were clear and thereby complied with the cited rule. Claim sustained.

Brian Clauss

Brian Clauss, Chairman

Samantha Rogers

Samantha Rogers, Carrier Member

David D. Tanner

David D. Tanner, Organization Member

Signed on December 23, 2013