

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 26

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-13-0156
Organization File. 130-13N1-1310

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing February 14, 2013, when Claimant, Blane A. Jones (1634237), was dismissed for his alleged failure to lock up and pin up the wing of his ballast regulator on January 17, 2013 at Celina, Texas. The Carrier alleged violation of Engineering Instruction (EI) 14.3.3 Maintaining Roadway Equipment.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this dismissal and he be reinstated, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing February 14, 2013, continuing forward and/or otherwise made whole.

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.

The Organization asserts that it was a fatal error for the Carrier to not offer testimony from the Track Inspector who allegedly found the piece of equipment with the arm halfway down. Claimant denied inculpating himself and stated that he properly stowed his machine. He also stated that the machine was in an upright and locked position when he returned to it in the morning.

The Carrier counters that Claimant admitted to the failure and therefore the only question is whether the discipline was appropriate. There was no fault with the machine – as confirmed by the travelling mechanic.

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.

The Roadmaster testified that she heard a rumor that his machine had bled down with the arm fouling the adjacent track. She talked with Claimant and ordered an inspection of the Ballast Regulator that Claimant had been operating. This inspection occurred at the end of the shift following when the bleed down supposedly had happened.

The Travelling Mechanic testified that he never saw the machine in the bled down position. It was his understanding that the discovering Track Supervisor had properly stowed and pinned the arm of the machine.

Claimant testified that his machine was properly stowed when he arrived. This testimony is corroborated by the Travelling Mechanic's understanding that the Track Supervisor stowed the arm upon discovery. Further, it is not believable that a Track Supervisor would notice a machine bleeding down and in the foul without rectifying the situation. Consequently, this conclusion is in direct contradiction to the statement the Roadmaster attributes to Claimant: "that it was true that the right wing of his machine, the ballast regulator, was halfway down on the main line side that morning." Further, even if the statement were accurate, there is no way to know how Claimant knew that the arm bled down. Absent more, the simple fact that the machine arm came down at some undetermined time between the end of the shift and the beginning of the next is unanswered. Moreover, this statement is a note by the Roadmaster – it is not a statement written, acknowledged or signed by the Claimant when written. He denied the statement.

Claimant testified that he properly stowed and pinned his Ballast Regulator. There is nothing in the evidence that contradicts the testimony. The only testimony about the condition of the machine came from the Travelling Mechanic who noted no defects and that the arms were properly stowed and pinned. The unnamed person who could have testified about the condition when the arm was discovered was not called.

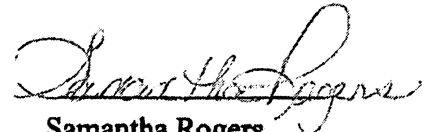
The record is devoid of substantial evidence of the cited violations. Claim sustained. The Carrier shall make this award effective within 30 days of execution.



Dave Scoville
Organization Member



Brian Clauss
Neutral Member



Samantha Rogers
Carrier Member

Signed on SEPTEMBER 22, 2015