

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 28

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-13-0118  
Organization File. 180-13S1-134

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing February 12, 2013, when Claimant, Nicholas W. Aldridge (1624584), was disciplined with a Level S 30-day Record Suspension with a 3-year review period for his alleged failure to safely work within a Form B authority on January 16, 2013 resulting in his allowing the mechanic and contract equipment to continue working while still on the main track even after Amtrak 567 was cleared through Form B limits as well as allowing the contract equipment to work without a completed Statement of On-Track Safety form or without proper site distance. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) MOWOR 11.3 Fouling the Track, MOWOR 11.4 Job Briefings, MOWOR 15.2 Protection by Track Bulletin Form B, and MOWOR 6.3.1 Main Track Authorization.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated, if applicable, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing February 12, 2013, continuing forward and/or otherwise made whole.

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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 claims a procedural error because the Claimant was not properly notified of the hearing. On the merits, the Organization claims that the proper procedure for the Employee in Charge was followed and that there was no fouling of the track because there was over four feet between the equipment and the Main Track.

The Carrier counters that there was a failure to provide proper protection under the Form B. Claimant was the EIC and failed to provide the proper protection for the contractors and their equipment and also failed to properly document the protection. The Construction Roadmaster testified that the backhoe was within one to two feet of the track – thereby fouling the Main Track after the Amtrak train had been cleared to enter the Form B limits. The credibility of the witnesses was resolved in favor of the Carrier and nothing in the record indicates that it was an improper determination.

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.

A review of the evidence indicates there are no procedural defects that void the discipline. On the merits, the evidence shows that the Form B was obtained by one employee but that another employee was the EIC. The Construction Roadmaster was at the scene and witnessed the backhoe fouling the Main Track. He checked the required documentation and found it to be incomplete. Claimant testified that the equipment was six feet away from the main track. However, the Construction Roadmaster testified that he saw the backhoe operating after Amtrak had been cleared to enter the Form B limits and that part of the equipment came within a foot or two of the end of the tie – placing it within four feet of the track.

The testimony of Claimant and the Roadmaster is not inconsistent - although the equipment may have had its wheels more than four feet from the Main Track, the bucket could easily be within the limits and fouling the track while it was operating. Resolution of conflicting testimony is a question of credibility and the precedent is clear that questions of credibility are resolved by the hearing official. The record does not indicate error in resolving in favor of the Carrier. Further, the evidence does not indicate an abuse of discretion in assessing the discipline.

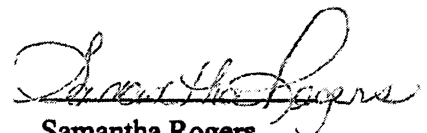
Claim denied.



Dave Scoville  
Organization Member



Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on SEPTEMBER 22, 2015