

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 29

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-13-0120
Organization File. 160-13N1-139

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing February 20, 2013, when Claimant, Gary L. Hillis (1775931), was disciplined with a Level S 30-day Record Suspension with a 3-year review period for his alleged misconduct in regard to his alleged failure to have a proper job safety briefing and his alleged failure to know the voltage prior to engaging task of operating Grapple Truck Boom near power line on January 23, 2013 on the Clovis Subdivision. The Carrier alleged violation of MOWOR 1.1 Safety, MOWOR 1.3.1 Rules, Regulations and Instructions, MOWOR 1.6 Conduct, MOWSR 1.1 Job Safety Briefing, and MOWSR 17.2.5 Power Line Clearance.
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 20, 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 claims that the charges have not been proven because the two Carrier witnesses admitted that they did not measure the distance between Claimant's vehicle and the power line. Further, they neither asked him about his job briefing nor requested his documentation. Moreover, Claimant produced documentation indicating a job briefing and that the voltage of the line was 120 volts. Because he knew the voltage was 120 volts, he was operating in the safe zone for the power line.

The Carrier counters that there was a failure to follow proper safety procedure. Claimant never told the supervisors that he knew the voltage. There is no documentation of a telephone call to the electric company to ascertain the voltage.

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 establishes that neither supervisor inquired about a job briefing or documentation. Claimant produced the documentation for the job briefing and that documentation indicated that the voltage was 120 volts. His testimony that he checked with Norris Electric is unrebutted and supported by the documentation.

There is no substantial evidence in the record to support the charge.

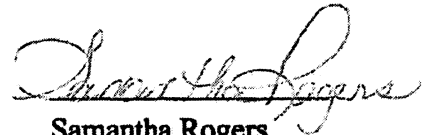
Claim sustained. The Carrier shall make this award effective within 30 days of execution.



Dave Scoville
Organization Member



Brian Clauss
Neutral Member



Samantha Rogers
Carrier Member

Signed on September 22, 2015