

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 30

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-13-0117  
Organization File. 100-1313-131

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing February 11, 2013, when Claimant, R.D. Morgan (6461347), was disciplined with a Level S 30-day Record Suspension with a 1-year review period for his alleged failure to immediately report an alleged back injury while moving a switch tie by hand on October 2, 2012, and not reporting it until January 2, 2013. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 1.25 Reporting.
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 11, 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 raises a number of procedural objections regarding the investigating officer's conduct at the hearing. Specifically, the Organization argues that it was error: to call Claimant as the first witness; to exclude the testimony regarding the injury; and to exclude a witness statement about the injury. On the merits, the Organization argues that Claimant testified about the date, time, location and specific details of the conversation surrounding his notice of injury to Roadmaster McAleese. He clearly notified the Carrier supervisor and followed up when he was diagnosed with a back injury.

The Carrier responds that the evidence indicated that Claimant did not timely report his back injury. The Roadmaster testified that he did not talk with Claimant in October and only learned of the injury in December. The Carrier also argues that Claimant should not be believed because he tried to exonerate himself when he stated he did not know he needed to fill out an injury form.

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.

An examination of the record indicates that there is no substantial evidence in the record. The Claimant clearly articulated the specific details of the conversation. Claimant stated that he told the Roadmaster that his back hurt and that he did not need medical attention. A conversation that was corroborated, in part, by Roadmaster McAleese. Claimant specifically recalled that the Roadmaster commented that he had a traffic court date that he had forgotten and that the Roadmaster left with Mr. Mesa to get to court. Based upon the evidence, this Board finds that Claimant is a 34 year employee well aware of the reporting requirements, he reported the back injury within the 72 hours requirement of the rule, he did not seek medical attention after reporting his injury, he reported his December diagnosis within hours of receipt.

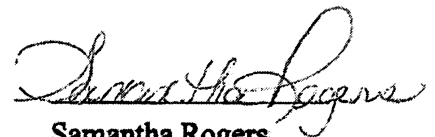
Claim sustained. The Carrier shall make this award effective within 30 days of execution.



Dave Scoville  
Organization Member



Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on SEPTEMBER 22, 2015