

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 31

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-12-0177  
Organization File. 170-13N1-1215

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing March 8, 2012, when Claimant, Elroy L. Peralto (1423292), was disciplined with a Level S 30-day Record Suspension with a 1-year review period for his alleged failure to document the location of the switch thrown in the position of Switches/Derails portion of Track Authority form while working as Flagman on the Gallup Subdivision on February 9, 2012. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 8.2 Position of Switches.
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 March 8, 2012, 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 argues that the evidence was not sufficient to meet the burden of proof. Claimant documented 60 entries. He did not include all the details for one switch, but testified that he would have entered the information prior to the end of his shift. According to the Organization, Rule 8.2 does not state a time frame for when the information must be recorded. The Rule was not broken.

The Carrier argues that the Rule requires a contemporaneous entry of the required information when the switch is operated. Further, Claimant admitted that he did not comply with

the Rule. Because of the admission, the only question is whether 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.

A review of the evidence indicates that Claimant, as he admitted, did not comply with the Rule. The Rule requires contemporaneous entry. The Organization points out that Claimant recorded 60 accurate entries. However, that accuracy in recording does not negate the requirement to keep accurate entries of all required documentation. Further, there was no abuse of discretion in imposing the discipline. Claim denied.



Dave Scoville  
Organization Member

Brian Clauss

Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on September 22, 2015