

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 34

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-13-0016
Organization File. 170-13N1-12117

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing November 8, 2012, when Claimants were disciplined as follows:
F.L. Garcia (6542336) Level S 30-day Record Suspension with a 1 year review period,
T. Pennington (0046110) Level S 30-day Record Suspension with a 3 year review period, and
M.A. Jones (1664036) Level S 30-day Record Suspension with a 1 year review period. Discipline was for their alleged failure to conduct a proper job safety briefing and provide proper authority prior to occupying the main track when they occupied main track outside of their authorized designated limits with a hyrail section truck on October 11, 2012. The Carrier alleged violation of MOWOR 6.3.1 Main Track Authorization, MOWOR 14.3 Operating with Track Warrants, MOWOR 11.3 Fouling the Track and MOWOR 11.4 Job Briefings.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimants' record this discipline and they be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing November 8, 2012, and 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 contends that the only culpability in the instant matter belongs to Claimant Garcia who admitted that he was the EIC. He admitted at the scene and at the hearing that he went the wrong way. Claimant Pennington was the driver and listened to the EIC and

Claimant Jones was a rear seat passenger who could not control the travel of the truck. The Claimants held a job briefing and the EIC made a mistake – every occupant of the truck should not be charged with the conduct.


The Carrier counters that all Claimants were rules qualified and therefore responsible for exceeding the limits. The Claimants admitted the violation and the only remaining question is whether the discipline was appropriate.

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 uncontroverted testimony is that the employees conducted a job briefing. Mileposts were called out as the truck travelled and the in-cab limits warning system was operating. Claimant Garcia and Claimant Pennington were the EIC and truck driver, respectively. They admitted to exceeding the limits by mistake. There is substantial evidence in the record of Claimant Garcia and Claimant Pennington's violations. The Carrier did not abuse its discretion when it issued their discipline.

Claimant Jones is a separate inquiry. There is no substantial evidence for Claimant Jones. The testimony established that Claimant Jones was a rear seat passenger with an obstructed view in a noisy truck. The employees conducted a job briefing. He was new to the territory and heard the mileposts being called out. He looked around the driver as they were approaching the limit and saw that the in-cab warning light was red – indicating that limits had been exceeded. He was listening to the EIC and the driver and there was nothing he could do from the rear seat. His claim is sustained.

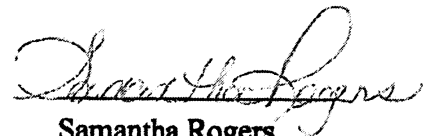
Claims sustained in part and denied in part as discussed above. The Carrier shall make this award effective within 30 days of execution.



Dave Scoville
Organization Member



Brian Clauss
Neutral Member



Samantha Rogers
Carrier Member

Signed on SEPTEMBER 22, 2015