

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 35

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-12-0493  
Organization File. BURL-13S1-1212

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing July 13, 2012, when Claimant, Dannie R. Cohn (1751320), was disciplined with a Level S 30-day Record Suspension with a 3 year review period for his alleged failure to stop on-track equipment within half the range of vision short of a stop signal displayed at Pendleton, Texas on July 4, 2012. The Carrier alleged violation of MOWOR 1.1 Safety, MOWOR 1.1.1 Maintaining a Safe Course and MOWOR 6.50 Movement of On-Track Equipment.
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 with seniority, vacation, all rights unimpaired and pay for all wage loss commencing July 13, 2012, and 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 a procedural error with the use of telephonic testimony. On the merits, the Organization contends that the testing was not in conformance with Special Instruction 48 and MOWOR 5.2.2B.

The Carrier maintains that the Claimant operated past a stop flag placed during a test. Although he may have passed other similar tests, he did not pass this one.

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 evidence established that the test was done prior to sun up. Special Instruction 48 and MOWOR 5.2.2B place certain requirements on flags used during the night. Uncontroverted testimony established that the flag in use was an orange cloth flag – and not the reflectorized red flag placed between the tracks. The testing was not in compliance with the applicable rules.

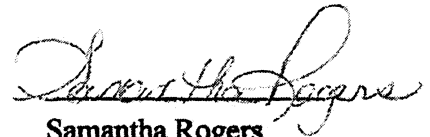
Claims sustained. The Carrier shall make this award effective within 30 days of execution.



Dave Scoville  
Organization Member



Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on SEPTEMBER 22, 2015