

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
)
v.)
)
BNSF RAILWAY COMPANY)

Carrier File No. 10-13-0569
Organization File No. C-13-D040-32

Claimant — Lori Teniente

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on September 10, 2013, when it issued a Level S Record Suspension to Claimant, Lori Teniente, for violation of MWOR 6.3.1 Main Track Authorization, MWOR 10.3 Track and Time, and MWOR 1.1 Safety in connection with Claimant's failure to obtain proper authority before surfacing gang machines fouled the track at/or near MP 80.478 Main Track 3, at West Bill, on the Orin Subdivision, at approximately 1115 hours on Friday July 19, 2013 while assigned as Foreman on gang TSCX0050.
2. As a consequence of the violation referred to in part (1), Claimant's record should be cleared of the discipline and any mention of the investigation and shall be made whole for any losses.

BACKGROUND:

The Claimant entered service with the Carrier on May 12, 1997. At the time of the incident that resulted in her discipline, she was working as an Acting Foreman with a Mobile Gang that was stationed in Wyoming.

Sometime on July 19, 2013, personnel from Union Pacific contacted the Carrier to report that there was a piece of railway maintenance equipment occupying part of the track block authorized for UP train 6074. The Assistant Roadmaster on the Orin Subdivision, Daniel Hyatt, investigated. Hyatt determined that a 6700 Tamper operated by two members of the Maintenance of Way gang that the Claimant was supervising had, in fact, been outside its authorized track and time limits. Hyatt was unable to reach the Claimant, but he talked to and obtained written statements from the two Machine Operators, Jacob Fry and Todd Wohletz, who told him that they had inadvertently exceeded their limits.

The Carrier sent Claimant a Notice of Investigation dated July 22, 2013, indicating that an investigation would be held “for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to obtain proper authority before surfacing gang machines fouled the track at/or near MP 80.478 Main Track 3, at West Bill, on the Orin Subdivision, at approximately 1115 hours on Friday July 19, 2013 while assigned as Foreman and Machine Operator on gang TSCX0050.

Following a mutually agreed postponement, the hearing took place August 16, 2013. At the hearing, the Carrier presented evidence regarding the violation of track and time authority, submitting the authority that had been granted as well as written statements from employees who had been involved. The Machine Operators were moving the Tamper from one main track to another, a somewhat difficult crossover maneuver. Both Operators acknowledged that the Claimant had conducted a job briefing with them both before they started work and also when she radioed them their track and time authority for the disputed move. Todd Wohletz’ statement indicated that Claimant had told him to let her know when he was “clear of the switch,” but that he had misunderstood her. Wohletz’ statement further indicated that he did not think there was enough room between the switch and the insulated joint, so he and Fry moved the Tamper beyond what Claimant had instructed them. As it turned out, the move took them past their authority. A Rail Detector Pilot, James Williams, noticed that they were outside their limits and told Wohletz and Fry to move back into their track and time limit. According to his written statement, Williams then called Claimant and told her what had happened. David Hyatt testified that in his opinion, Claimant had not conducted a proper job briefing, because if she had, she and the Machine Operators would have realized that there was insufficient room for the Tamper to make the move required. The Claimant testified that in the separate job briefings she conducted with Fry and Wohletz at the beginning of the day (separate because Wohletz had been suffering from a cold and came in late), she instructed them about their authority, which was limited because of other rail traffic. They would only be able to move the Tamper so far and then would be required to tie up for a while before being able to obtain the remaining authority they needed to complete the move. She testified that Fry and Wohletz told her that they understood. She

repeated the information to them over the radio immediately before the move and they read the time and track authority back to her. At the time the Tamper exceeded its track authority, she was in another area of the Yard where she could not see them. She testified that in her opinion there was enough room for the Tamper to make the maneuver. The distance where the machine was supposed to tie up was 46 feet long. The actual length of the Tamper is not in the record. She testified that she asked the Machine Operators if they were clear of the switch, which they told her they were. They did not tell her that they had gone past their limits, and she did not ask because “they had already been briefed twice that we were not going to go past West Bill.” She had not asked for the next block of track because she was told they had to wait for about an hour on the track and time because of other rail traffic. She stated that even if she had been present in the vicinity in her truck, she could not have prevented the Machine Operators from moving the Tamper beyond its track authority. Finally, she stated that she did not feel she had violated any of the rules she was charged with, because she had given the Machine Operators two briefings on their authority and she took them at their word when they told her they understood.

By letter dated September 10, 2013, the Claimant was informed that she had been found in violation of MWOR 6.3.1, MWOR 10.3, and MWOR 1.1. She was assessed a Level S Record Suspension and placed on a three-year review period.

FINDINGS AND OPINION:

Public Law Board 7602, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein.

The Carrier found Claimant guilty of violating MWOR 6.3.1, MWOR 10.3 and MWOR 1.1 due to her “failure to obtain proper authority before surfacing gang machines fouled the track at/or near MP 80.478 Main Track 3, at West Bill... on Friday July 19, 2013.” MWOR 6.3.1 — Main Track Authorization, reads in part:

...When requesting authority or establishing protection, the employee in charge must ensure that equipment and employees do not occupy or foul the track until authority is received or protection is established....

MWOR 10.3 — Track and Time states, in part:

The control operator may authorize men or equipment to occupy a track or tracks within specified limits for a certain time period. Authority must include track designation, track

limits, and time limit. People or equipment may use the track in either direction within the specified limits, until the limits are reported clear.

The remainder of MWOR 10.3 details how to request track and time and how to report clear of track and time.

MWOR 1.1 — Safety sets forth general employee responsibilities for safety. It states, in part:

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment....

Job Safety Briefing

Conduct a job safety briefing with individuals involved

- Before beginning work
- Before performing new tasks
- When working conditions change

The job safety briefing must include the type of authority or protection in effect.

The Carrier based Claimant's discipline on its conclusion that she had not conducted an appropriate job briefing. The basis for that conclusion is not entirely clear. Evidence in the record from the Claimant and both Machine Operators is that she conducted job briefings with both of them before they started work and that she gave them their specific track and time authority right before they moved the Tamper. Unfortunately, for whatever reason, the Machine Operators did not clearly understand the limits of their authority; in his written statement, Mr. Wohletz wrote: "I misunderstood." He stated that when he and Mr. Fry got to where they were supposed to be, they had some questions. At that point, they should have contacted the Claimant, as their supervisor, for clarification and/or further instructions. There is no indication that they tried to do that. Instead, they moved the Tamper past the switch that was the limit of their authority. Although Claimant, as the supervisor, is the person ultimately responsible for movement of equipment under her supervision, it is not clear to the Board that she should bear full responsibility when her subordinates fail to follow the standard protocol when they have questions about her instructions.

The Carrier also indicated in its December 30, 2013, letter denying the Organization's November 5, 2013, appeal that ordinarily:

... [O]ne would not just have authority within the control point or "OS." One would have authority in the control point and on either side of it. This way, there is plenty of room to clear the crossover switch when making the move. But in this case, Claimant gambled that there was enough room within the control point itself to clear the switch. But there was not. Arguably, there would have been only a few feet on either side of the tamper to facilitate such a move. In the end, the gamble did not pay off as the crew of the tamper, following instructions from Claimant, found itself on Main Track without authority.

The problem with this conclusion is that it is not supported by the evidence in the record: the statements from the Machine Operators establish that they did *not* follow Claimant's instructions—they moved the Tamper beyond the stopping point she had given them. Moreover, the Claimant credibly testified about why she had the Tamper move within seemingly narrow limits: other rail traffic limited any ability to get the authority she needed right away to complete the crossover move. Her plan was to move the Tamper as far as it could go, then have it sit until further track authority could be obtained. Obviously, things did not work out as she had planned. But on its face, her plan was not a bad one, or one that would have violated any Carrier rule or policy if the Machine Operators had stopped the Tamper as instructed. But it does not appear from the record that the Claimant explained her "two-part move" plan to the Machine Operators, and that may have been the source of their confusion about the exact track and time limits that had been authorized.

However, the Machine Operators should have stopped at the limits of the authority they had been given by Claimant before moving beyond it without contacting her. The Carrier based its conclusion that Claimant was guilty of the charges against her on the proposition that if her subordinates ignored their track and time limits, she must have played a role. As the supervisor of the Machine Operators, the Claimant was the person ultimately in charge of the Tamper's movements. However, it is inappropriate to hold her fully responsible for the Machine Operators' failure to follow her instructions and to stay within the track authority she gave them. At most, she failed fully to explain the sequence and timing of the move she intended. But the fact remains, she did conduct job briefings and did notify the Machine Operators of their authorized track and time, and they ignored the limits without notice to her. The record here justifies no more than a low-level Standard infraction under the Carrier's Policy for Employee Performance Accountability (PEPA). Accordingly, the Level S Record Discipline that was assessed was inappropriate.

In summary, Claimant's discipline shall be reduced to a Standard violation. The Level S Record Suspension on her record shall be removed and replaced with a formal

reprimand and the appropriate review period pursuant to the progression set forth in the PEPA.

AWARD

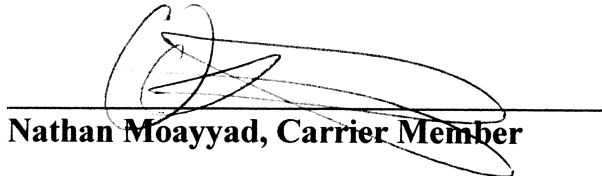
Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



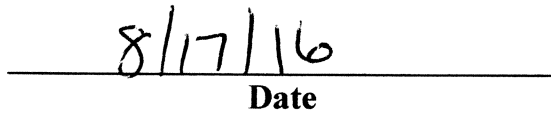
Andria S. Knapp, Neutral Member



Nathan Moayyad, Carrier Member



Zachary Voegel, Organization Member



Date