

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

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

Carrier File No. 10-15-0022
Organization File No. C-15-D040-2

Claimant — Tyler Wilson

BACKGROUND:

The facts of the incident that resulted in the Claimant's being assessed a Level S 30 Day Record Suspension with a three-year review period are not seriously in dispute. On the morning of June 26, 2014, the Claimant was operating a Boxer machine on the RP04 gang, which was working near Rodd, Colorado. The crew was waiting on a siding for track and time when the Number Two Spiker Operator needed a ride back to his machine. The Claimant motioned to him that he would take him and the Spiker Operator hopped onto the Boxer. As they traveled down the track they approached a switch, and the Claimant made sure it was properly aligned before moving through it. However, the working heads on the Boxer hit the switch points, ripping the heads off the Boxer and wedging them in the switch. The Claimant acknowledged in his testimony at the investigatory hearing that he had forgotten that the working heads were in the down position and that he failed to lock up and pin up the heads before setting the Boxer in motion. A preliminary estimate of the damage to the Boxer was \$34,000; the record does not include any estimate of the damage caused to the track and switch.

By letter dated July 1, 2014, the Carrier sent Claimant a Notice of Investigation "for the purpose of ascertaining the facts and determining your responsibility, if any,

in connection with your alleged failure to ensure all equipment components will clear over crossings, switches, derails, and frogs, resulting in damage to machine X0100528 and the track, on June 26, 2014, at approximately 1000 hours, at or near MP 384.9 on the Akron Subdivision.”

Following mutually agreed postponements, the investigatory hearing was held October 27, 2014. At the hearing, the Claimant testified that he had bid onto RP04 to run a Baby Clipper but was taken off that after only two weeks; he was not sure why. June 26 was only his third day operating the Boxer. The Claimant stated that he had not received any formal training on its operation, only a brief walk-through to familiarize him with the functions of various buttons and switches and other operating components. The lock up/pin up procedure for the working heads on the Boxer was different from that on the Spike Puller and Baby Clipper machines that he had worked on before: they both required manual adjustment of the working heads while the Boxer had a button that automatically performed the lock up/pin up procedure. He attributed the accident to confusion on his part about how to operate the Boxer.

Following the hearing, the Carrier issued its Decision Letter on November 12, 2014. The Carrier found that the Claimant had violated MWOR 6.50.3, Equipment Components Clear, and assessed him a Level S 30 Day Record Suspension with a three-year review period. The Organization filed an appeal, and the parties having failed to resolve the matter mutually, it has been appealed to the Board for decision.

According to the Carrier, the Claimant clearly violated MWOR 6.50.3 on June 26, 2014. There is no dispute that the Claimant failed to ensure that his equipment components were clear before traveling across a switch in a Boxer with the working heads in the down position, causing damage to both the Boxer and the track. The accident was a serious one and warranted the Level S 30 Day Record Suspension with a three-year review period that was assessed. The Organization contends that mitigating circumstances were present, in that the Claimant was never trained on the Boxer. He was a relatively new employee, having worked for the Carrier for about nine months when the accident happened. In addition, June 26 was only his third day on the machine. He candidly testified that he forgot the controls and was confused because of his inexperience with the machine. The Carrier’s failure to provide the Claimant with adequate training was a significant contributing factor in the accident, and he should not be punished for the Carrier’s failure to properly train him on how to operate the Boxer.

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 that the Claimant had violated Rule 6.50.3, Equipment Components Clear, which states: "Before passing over crossings, switches, derails and frogs, be sure all equipment components will clear." It is undisputed in the record that Mr. Wilson failed to lock up and pin up the working heads on the Boxer before setting it in motion down the track, and that the accident occurred because the working heads were still in the down position when Claimant drove the Boxer across a properly aligned switch. Without more, Claimant's actions violated Rule 6.50.3. However, the Organization argues that there were mitigating circumstances that minimize the Claimant's responsibility for the accident, in that he was not properly trained on the Boxer before being required to use it. The day of the accident was only his third day on the Boxer. Its operation and controls were significantly different from the Spike Puller and Baby Clipper that he had operated before.

While the Claimant's lack of familiarity with the Boxer may have played some role in the accident, the Board does not find the Organization's arguments persuasive. The lock up/pin up procedure is not unique to the Boxer—it is a critical safety practice that is a required standard operating procedure on almost all of the equipment MOW employees use in the course of their work. The Claimant's testimony about the differences in lock up/pin up procedures on the various pieces of equipment he had operated establishes that he knew he was required to lock up and pin up before moving his equipment. To his credit, the Claimant did not claim that he did not know how to lock up and pin up on the Boxer. If he had had any questions, it was incumbent on him to contact a supervisor or even another employee for guidance before putting the machine in motion. From the testimony, it sounds as if lock up/pin up is easier on the Boxer, where the operator simply pushes a button, than on other machines that require manual adjustment. Nor is this a case where the button on the Boxer failed to operate properly. The Claimant simply forgot. The resulting accident caused considerable damage to the machine and the track. The conclusion that he failed to ensure that all of his equipment components would clear any crossings, switches, derails and frogs that he encountered while taking the Spiker Operator back to his

machine—that is, that he violated MWOR 6.50.3—is inescapable. The resulting accident was a serious one and fell into the Level S category of serious rules violations under the PEPA. A 30-day record suspension with a three-year review period is the first step in the Level S disciplinary progression. Accordingly, the Carrier did not violate the Agreement when it disciplined the Claimant for violating MWOR 6.50.3 on June 26, 2014.

AWARD


Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.


Andria S. Knapp, Neutral Member


Nathan Moayyad, Carrier Member


Zachary Voegel, Organization Member

3/15/17

Date