

BEFORE PUBLIC LAW BOARD NO. 7602

AWARD NO. 52

---

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION AND

BNSF RAILWAY

BNSF FILE NO. 10-15-0336  
BMWED FILE NO. C-15-D040-24  
Claimant: A. Grim

---

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

I am appealing to you the decision of Southwest Division General Manager Steve Curtright in his letter dated September 4, 2015, to uphold the discipline assessed to Mr. Andrew Grim as appealed in letter from Vice General Chairman Jim Varner dated August 29, 2015, when Mr. Grim, hereinafter referred to as Claimant, was assessed a Level S, 30-Day Record Suspension, and a three (3) year review period for alleged violation of MWOR 11.3 Fouling the Track, MWOR 11.4 Job Briefings, and MWOR 6.3.1 Main Track Authorization.

---

**Findings:**

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 7602 has jurisdiction over the parties and the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

Claimant was notified in a letter dated June 12, 2015:

An investigation has been scheduled at 0900 hours, Wednesday, June 17, 2015, at the BNSF Conference Room, 1624 First Street NW, Albuquerque, NM, 87102, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violations that resulted in fouling Main track without authority on the Southwest Division, Clovis subdivision, on Main I at MP 800.5 on June 11, 2015 at approximately 0823 hours MDT while working on System Construction Gangs CG04 and/or CG02. Alleged violations include but not limited to, failure to determine if the proper on-track safety was provided, failure to conduct a proper job safety briefing including track limits of authority, failure to properly restate limits received from train dispatcher DS07, failure to notify the train dispatcher of the correct track initially occupied or fouled, failure to properly void released mandatory directives, and failure to remain alert and attentive in the performance of duty..

This is to advise GERALD ALLEN GILL JR is being withheld from service pending results of investigation.

An investigation was held and Claimant was notified in a letter dated July 6, 2015:

As a result of investigation held on Wednesday, June 17, 2015 at 0900 hours at BNSF Conference Room, 1624 First Street NW, Albuquerque, NM, 87102 you are hereby assessed a level S 30 Day Record Suspension for your violations that resulted in fouling Main track without authority on the Southwest Division, Clovis subdivision, on Main 1 at MP 800.5 on June 11, 2015 at approximately 0823 hours MDT while working on System Construction Gangs CG04 and/or CG02. Violations include but not limited to, failure to determine if the proper on-track safety was provided, failure to conduct a proper job safety briefing including track limits of authority, and failure to remain alert and attentive in the performance of duty.

In addition, you are being assessed a Three (3) Year Review Period that commences on July 8, 2015. Any rules violation during this review period could result in further disciplinary action.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 11.3 Fouling the Track, MWOR 11.4 Job Briefings and MWOR 6.3.1 Main Track

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

The Carrier argues that there are no procedural defects in the instant matter. Claimant was the Foreman of the Surfacing Gang and obtained the time and track authority for the gang. He thought he was requesting authority for Main Track 1, but actually got authority for Main 2. That error put the gang out of their authority shortly after they began to move.

The Organization counters that there was confusion, chatter on the radio, and disagreement amongst the surfacing gang. All these factors contributed to the confusion. Operator Tong was familiar with the territory and contributed to the confusion. Claimant was unfamiliar with the area.

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 Board has reviewed the evidence. There are no procedural violations which void the discipline. On the merits we find that there is substantial evidence in the record to support the discipline. Claimant was the Foreman. The situation may have been confusing, but the Foreman was responsible for obtaining the time and track authority. He incorrectly requested the authority

and exceeded his limits. If he was confused, the safe course of action would have been to confirm the track and time.

This violation was a serious safety violation and a Level S is not an abuse of Carrier discretion.

**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.

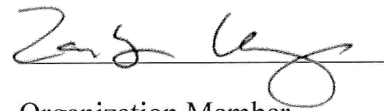


6/14/18

Neutral Member



Carrier Member



Organization Member