

BEFORE PUBLIC LAW BOARD NO. 7602

AWARD NO. 54

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

AND

BNSF RAILWAY

BNSF FILE NO. -11-15-0463  
BMWED FILE NO. B-M-2873-E  
Claimant: W. Simanton

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STATEMENT OF CLAIM

The Organization alleges BNSF violated the Agreement when W. Simanton was issued a Level S 30 Day Record Suspension and a three-year review period as a result of a formal investigation held on June 24, 2015, for Critical Decision Failure on March 29, 2015

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**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.

In the instant matter, Claimant received a letter dated March 31, 2015, advising him of an investigation into his alleged Critical Decision Failure when the Hyrail Vehicle he was operating set on the track outside the issued Track authority Limits 37-3, MP 387.7, on March 29, 2015, while working as a Track Inspector.

An investigation was held following a continuance. Claimant was sent a letter dated July 2, 2015, which provided:

As a result of investigation held on Wednesday, June 24, 2015 at 0900 hours at BNSF Depot Conference Room, 235 Main Street, Havre, MT, 59501 you are hereby assessed a Level S 30 Day Record Suspension for your CRITICAL DECISION FAILURE when BNSF Hyrail Vehicle 19873 set on the track outside the issued Track Authority Limits 37-3, MP 387.7 near Harlem, MT approximately 1407 hours on March 29, 2015 while working as Track Inspector on the Milk River

Subdivision. In addition, you are being assessed a Three (3) Year Review Period that commences on July 2, 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 6.3.1 Main Track Authorization. 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 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.

This Board has reviewed the record and finds that there is no substantial evidence to support the discipline.

**Award:**

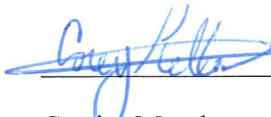
Claim sustained.

**Order:**

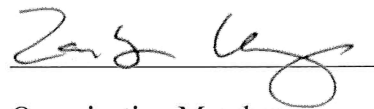
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Neutral Member



Carrier Member



Organization Member