

BEFORE PUBLIC LAW BOARD NO. 7602

AWARD NO. 56

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

AND

BNSF RAILWAY

Carrier File No. 10-15-0342

Organization File No. C-15-D040-25

Claimant: S. Everson

STATEMENT OF CLAIM

The Organization appeals the discipline issued to Claimant on June 23, 2015 for violation of MWOR 8.3, MWOR 8.2, and MWOR 1.13.

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 advising him to appear at an investigation on April 28, 2015:

[I]n connection with your alleged failure to correctly identify that the point on the frog were incorrectly position prior to moving equipment over the frog points resulting in damage to swing nose frog, when you installed a crossover switch at DeSoto on April 7, at approximately 1205.

By letter dated June 3, 2015, Claimant was assessed a Standard Form Reprimand with a One Year Review Period for violating MWOR 8.3 Main Track Switches, MWOR 8.2 Position of Switches, and MWOR 1.13 Reporting or Complying with Instructions.

The Carrier maintains that there is substantial evidence in the record to support the discipline. Claimant was the EIC and had been instructed on the prior day to visually confirm position of the switches. He did not do it and a rail vehicle operated through the improperly aligned

frog and damaged it. The Organization's claim that the contractor operating the rail vehicle was at fault does not discount Claimant's responsibility.

The Organization contends that Claimant did not violate the cited Rule and that there is no proof in the record. Claimant's work group was working in the area. He confirmed the position of the frog by contacting an employee who confirmed the proper position of the switch. The contractors ignored the applicable rule regarding work zone speeds and view of a switch or frog. Their misconduct was ignored by the Carrier.

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.

There is no substantial evidence of the Rule violations in the record.

Award:

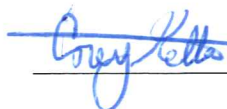
Claim sustained.

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