

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 59

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

and

BNSF RAILWAY

BNSF FILE NO. 11-15-0464

BMWED FILE NO. S-P-2013-G

Claimant: I. Dickens

STATEMENT OF CLAIM

We are filing a claim appealing the Level S 30 Day Record Suspension with extreme restrictions added, issued to maintenance way employee, Issiac Dickens as a result of an investigation held on May 27, 2015 (FILE NO: NWE-MOW-2015-00075). The discipline was assessed with a letter from Supervisor Engineering Support Amanda Bishop dated June 24, 2015.

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 January 16, 2015, that provided:

An investigation has been scheduled at 0900 hours, Sunday, January 25, 2015, at the Division Headquarters, 2454 Occidental Avenue South Suite 1A, Seattle, Washington 98134-1451, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with alleged violations that occurred leading to leading to train C SXMRBE0 09A impacting hy-rail vehicle 25686 at approximately 1144 hours January 10th, 2015, at or near milepost 11.5 on the Scenic Subdivision, Seattle, Washington, while you were working as Track Inspector TINS2244. Alleged violations include but are not limited to failure to properly recognize the correct main on which authority was granted, and failure to

ensure that equipment and employees do not occupy or foul the track until authority is received or protection established.

Following many agreed postponements, a hearing was held. Claimant received a letter dated June 24, 2015 which provided:

As a result of investigation held on Wednesday, May 27, 2015, at 0900 hours, at Division Headquarters, 2454 Occidental Avenue South, Suite 1-A, Seattle, WA, 98134-1451, you are hereby assessed a Level S 30 Day Record Suspension for your failure to properly recognize the correct main on which your authority was granted, and failure to ensure that equipment and employees did not occupy or foul that track until authority was received or protection established, leading to train C SXRBE009A impacting your hyrail vehicle 25686 at approximately 1144 hours, January 10, 2015, at or near MP 11.5 on the Scenic Subdivision, Seattle, Washington, while you were working as Track Inspector (TINS2244).

In addition, you are disqualified from the positions of Track Inspector, Foreman, and from holding any other position which would require you to obtain track authority of any kind without supervision, whether for yourself or others, including but not limited to Track Warrants, Track and Time, Track Permits, and Form B Track Bulletins. You are prohibited from being an "Employee in Charge" as defined in MWOR 6.3.1 and 6.3.2.

Last, you are being assessed a Three (3) Year Review Period that commences on June 24, 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 and MWSR 1.6.2 Employees Fouling the 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).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative.

The Carrier argues that the Rules are clear and the violation apparent. Claimant admittedly set the Hy-Rail down on the wrong track. He had authority for one track and thought he was operating consistent with that authority. Claimant incorrectly thought that he had authority to operate on the track upon which he was operating. Claimant narrowly escaped death. There is substantial evidence of the violation in the record and there was no abuse of discretion of the Carrier's authority in imposing the discipline.

The Organization raises standard procedural objections. On the merits, the Organization contends that Claimant should not be disqualified from positions that require him to obtain track authority, that there was confusion because he had worked long hours and a lot of overtime, and

that he could not have violated the Rule because he believed he was occupying the proper track. The Organization also argues that the discipline was excessive.

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 finds that there are no procedural violations which void the discipline. On the merits, the Board finds that there is substantial evidence in the record. The record is clear and the account of what occurred is, to say the least, harrowing. Claimant set down on the wrong track and operated on the wrong track. He stopped to investigate a possible rock slide area. He saw the train coming and the crew saw him. The Engineer dumped the air and put the train into emergency. Luckily, Claimant was able to avoid being completely obliterated as he tried to outrun the train.

Claimant was simply wrong when he put down on the track. It was the wrong track and he did not have authority to be on it. There is nothing in the record or Rules which alter the conclusion that he was at fault. Further, reviewing the facts, his record, and the discipline policy, this Board finds that the Carrier did not abuse its discretion in assessing the discipline.

Award:

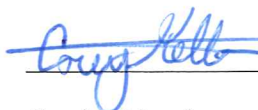
Claim denied.

Order:

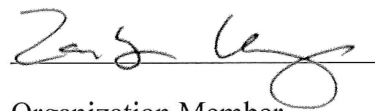
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Neutral Member



Carrier Member



Organization Member