

PUBLIC LAW BOARD 7702

CASE NO. 4

BNSF RAILWAY COMPANY

CARRIER CASE NO. 10-12-0029

V.

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION / IBT

ORGANIZATION CASE NO. C-12-D070-2

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1) The discipline (dismissal) imposed upon Mr. J. Galutia by letter dated October 19, 2011 for alleged violation of MOWOR 6.3.3. Visual Detection of Trains Part B. Lookouts, in connection with charges of alleged failure to position himself in a predetermined place of safety at least fifteen (15) seconds prior to the arrival of the train (BNSF 5735) traveling East bound on Main Track 1 which allegedly resulted in said train being placed in emergency and stopping two to three (2-3) cars past of his working location at Mile Post 56.7 on the Orin Subdivision at approximately 1140 on August 29, 2011 was on the basis of unproven charges, unwarranted and in violation of the Agreement (System File C-12-D070-2/10-12-0029 BNR).
- 2) As a consequence of the violation referred to in Part (1) above, Claimant J. Galutia shall now receive the remedy prescribed by the parties in Rule 40G.

FINDINGS:

The carrier and the employee or employees involved in this dispute are respectively the carrier and the employee or employees within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7702 has jurisdiction over the parties and the dispute involved herein.

The Claimant was a long term 19 year employee of the BNSF Railway.

Rule 6.3.3 Visual Detection of Trains Part B. Lookouts clearly requires the Claimant to position himself in a place of safety when the approaching train is at least 1100 feet away, based on the maximum authorized speed at that location, which is 50 MPH. The Rule exists to protect his own safety, as well as the safety of his fellow employees. The investigation showed that the Claimant admitted that he was still on the track when the train was considerably closer than that, willfully putting not only his own life in danger but also that of his co-worker, and putting the Engineer in an incredibly difficult position.

Carrier argument:

The Claimant confessed that he violated MOWOR Rule 6.3.3 Visual Detection of Trains Part B. Lookouts on August 29, 2011. He was working as a foreman and serving as the Lookout, and he failed to position himself in a predetermined place of safety at least 15 seconds prior to the arrival of the train moving at maximum authorized speed as indicated in the Statement of On-Track Safety. As a result the train had to be placed into emergency, and it stopped only after passing over the spot where the Claimant had stood on the track only moments before. The Claimant's negligence jeopardized his own safety and that of his fellow employees, and manifests a pattern of his repeatedly violating vital safety rules. The violation is clearly a Dismissible violation.

The Transcript from the investigation clearly demonstrates this on page 20, lines 14-22:

(Conducting Officer) DAVID GROVE: Mr. Galutia, do you understand the charges in the notice?

JEFF O GALUTIA: Yes, sir, I do.

DAVID GROVE: Mr. Galutia, did you violate the Rule 6.3.3, Part B, as presented by Mr. Steinke?

JEFF O GALUTIA: Yes, I did.

DAVID GROVE: Mr. Galutia, did you or your Representative have any further evidence you wish to present?

JEFF O GALUTIA: No, sir, I don't.

In PLB 7702, Case No. 3, the dismissal of this Claimant was upheld for the same violations that occurred some three weeks prior from this instant violation and claim. This violation is the Claimants 3rd Serious violation within a 36 month period.

After weighing the evidence presented; including the decision in PLB 7702, Case No.3, the evidence, in this case, supports the charges filed. The Carrier has proven substantial evidence exists for a dismissal.

Dismissal was the proper penalty in this case.

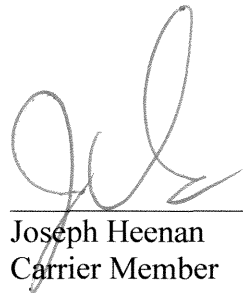
AWARD:

The Claim is hereby denied.



Marc A. Winters
Neutral Member

Dated: November 27, 2015



Joseph Heenan
Carrier Member



Kevin Evanski
Organization Member