

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NUMBER 7048

BNSF RAILWAY
(former ATSF property)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case No. 10
Carrier File No. 14-06-0236
Organization File No. 90-13N1-0646
Claimant: Richard L. Algren

The Claimant was discharged from his position as a Track Supervisor for a violation of Maintenance of Way Rule 1.6 – Conduct and Rule 1.2.7 – Furnishing Information, for his alleged failure to inspect track and for supplying accurate Federal Railroad Administration Track ~~Inspection Reports and false information. An Investigative Hearing was~~ held on July 19, 2006 in Sherman, Texas before Daniel Rankin, Division Engineer. The parties were unable to resolve their dispute, whereupon the matter was appealed for adjudication by Public Law Board 7048.

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing August 22, 2006 when Claimant R.L. Algren, was removed from service and dismissed for an alleged violation of Rules 1.6-Conduct and 1.2.7-Furnishing Information, involving failure to inspect track and failure to supply FRA track inspection reports and false information; and
2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate the Claimant with all seniority, vacation, all rights unimpaired and pay for all wage loss commencing August 22, 2006, continuing forward and/or otherwise made whole

This claim was discussed in conference between the parties.

NATURE OF THE CASE

According to the Carrier, the Claimant failed to inspect his territory on July 3, 2006 and provided false information to Roadmaster Michael J. Watkins, leading him to conclude that track had been inspected and that the Claimant had properly entered Federal Railroad Administration (FRA) Track Inspection Reports into the TIMS system.

~~Roadmaster Watkins, who is responsible for track maintenance between~~
the Creek and Madill Subdivisions from Tulsa, Oklahoma to Irving, Texas, testified at the Investigatory Hearing that he was headed back through Madill near Milepost 615 on Monday, July 3, 2006. According to Roadmaster Watkins, the Claimant allegedly advised him during a

telephone conversation at approximately 2:40 p.m. that the Claimant was a long distance from Mr. Watkins' location.

The Claimant acknowledged in his testimony that:

I came in on Monday morning to work on a switch in the yard, didn't work out, got a little frustrated with it, about noon, I went to start toning the dispatcher up to inspect track for about 2 hours. The dispatcher would not even acknowledge that I was out there, and I guess I got a little frustrated and I left. And as far as, for that day, you know that's, I don't have any excuse for the not riding on inspector drive.

The Claimant also admitted that he did not notify his supervisor, Roadmaster Watkins, that he was not going to inspect track on July 3, 2006. The Claimant also acknowledged that at no time did he inform Roadmaster Watkins that he had not ridden, i.e., inspected, track on July 3, 2006. The Claimant, having acknowledged that he did not inspect track on July 3, 2006, was unable to explain why there was an official FRA Track Inspection Report in the TIMS system showing that he had inspected track on July 3, 2006. The Claimant testified that:

I don't have any true explanation other than the fact that I entered those inspections on a daily basis. I'm assuming out of habit I just, I entered the inspection report on the next day. That's generally how I do it.

~~The Claimant had only been a Track Supervisor for several~~
months, a position for which he had no formal practical training.

However, the Claimant testified that:

When I spoke to Mr. Watkins about obtaining the position, a position, it is not a position that I can just bid on and be automatically granted. It has to be gone through a few channels. His understanding in me accepting the position, was that I didn't know everything and if I need ... If I had a question or needed assistance, that it would be there to not

just, to not be absolutely disciplined for actions to be explained what, what I'm doing wrong. If I'm doing wrong and what to look for when I have a question. Like I said earlier, there is no intention in it whatsoever [to file a false FRA report]. It's out of habit. I filed it the next day. You know like I said, I don't have any really true explanation for that. I don't know why I filed it out of habit.

Notwithstanding this testimony, the Claimant apparently entered an FRA report into the TIMS System falsely averring that he had inspected track on July 3, 2006. No amount of inexperience can justify filing a formal report indicating that track had been inspected when the Claimant knew he had not conducted such an inspection. This action erodes the Carrier's ability to rely on his honesty and to trust the integrity of reports he submits in the future.

The Claimant further testified:

I'm familiar enough to enter the date, I guess, and how it was conducted. What and what track was conducted. As far as entering proper defects, removing when defects are supposed to be repaired or shown repaired, I have no knowledge of that. While the only thing that I figured out for myself is some of how to take a track out of service and I just recently figured out how to put it back in service within the last couple of days.

~~The Claimant's misconduct cannot be attributable to inexperience~~

or lack of training. He simply submitted a report for inspecting track on July 3, 2006 when he conducted no such inspections. The fact that he submitted the report the following day, July 4, 2006, which was a holiday on which he did not work, neither exacerbates or mitigates his inaccurate representation to the Carrier, and ultimately to the FRA, that

he had inspected the main single track and four sidings on Sidings 7198, 7298, 7498 and 7701. The Claimant falsely specified that he inspected four of the tracks by Hi-Rail and inspected Siding 7701 by walking. That the Claimant entered an inspection on July 3, 2006 he had performed the previous day, July 2, 2006 is immaterial to assessing his misconduct.

The Claimant's conduct clearly violated Maintenance of Way Rule 1.6, which specifies that "Employees must not be ... 2. negligent ... 4. dishonest". Rule 1.6 further provides "Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the Company or its employees is cause for dismissal and must be reported. Indifference to duty, or to the performance of duty, will not be tolerated." By either negligently or intentionally permitting an official FRA report to be entered into the TIMS system purporting to verify that the Claimant had conducted an inspection of track on July 3, 2006, when the Claimant subsequently admitted that he did not conduct such an inspection, the Claimant committed serious misconduct and violated a duty of honesty and fair dealing with the Carrier. The Claimant's relative inexperience and lack of training in a position that he had held for more than three months before July 3, 2006 is irrelevant to a charge of dishonesty.

Neither does the record reflect that the Claimant was deprived of a fair investigatory hearing. The Claimant was asked whether he had an explanation for the apparent anomaly underlying his discharge, and testified that he could not explain how he came to submit a report on July 4, 2006 concerning inspections on July 3, 2006 other than by habit. However, mere habit would not explain why the Claimant entered specific track locations and inspection methods on a computer entry that was time-stamped in a manner that verified the Claimant made the entry. The Claimant's lack of a plausible reasonable explanation does not invalidate the propriety of the investigatory hearing at which he was offered ample opportunity to explain the evidence cited by the Carrier to implicate the Claimant in serious misconduct.

The Organization contends that the Claimant was exhausted from having worked seven days per week with no time off, and that he made an inadvertent error in attempting to catch up on his paperwork. The Claimant does not allege, however, that the entries he made on July 4 were other than for inspections he had purportedly carried out on July 3.

The Claimant did not testify that the reference to July 3 was erroneous, and that he should have been documenting inspections he completed on July 2. The Claimant's testimony, coupled with the credible version of the conversations between the Claimant and Roadmaster Watkins on July 3 about the Claimant's whereabouts and the activities in which he

had been engaged, created a reasonable basis for the Carrier to doubt the veracity of the Claimant's report.

No specialized training is necessary to impress upon employees their obligation to be honest and forthright in providing information to their employer, particularly information that will be submitted on the employer's behalf to the Federal Railroad Administration and that could form the basis of imposing a penalty on the Carrier or could jeopardize the safety of employees and passengers using these rails. All employees have a duty of honest dealing. This duty assumes greater importance when the safety of the public and of co-workers may be jeopardized by less than fastidious compliance with applicable reporting procedures, much less manifest dishonesty by false misrepresentation of having performed a series of track inspections. These reports were not simply misdated. The Claimant was certifying that he performed specific inspections on July 3, 2006 when he knew he had not done so.

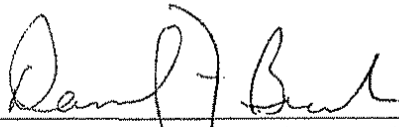
As the Carrier contends in its November 3, 2006 reply to General Chairman Hemphill, the role played on behalf of the Carrier by Division Engineer Dan Rankin, who issued the notice of investigation, was the conducting officer at the investigatory hearing, and issued the letter of discipline does not invalidate the imposition of discipline or render the investigatory hearing inherently unfair, as the record below contains

inculpatory testimony by the Claimant. Moreover, the record below clearly depicts that the Organization and the Claimant had adequate opportunity to state their case, to explain the Claimant's actions, and to cross-examine witnesses called by the Carrier. Even if the investigating officer was predisposed to a decision supporting his initial determination, the function of this Public Law Board is carefully to review the testimony and documents in the evidentiary record to assure that the Carrier has acted for just cause. There is no patent procedural defect that would justify overturning the Carrier's evaluation of the Claimant's uncontroverted admissions as a basis for imposing discipline.

The Claimant's credible testimony portrays him sympathetically as an earnest employee who now recognizes that he made a serious mistake. Although the Organization's plea that this mistake not jeopardize the promising career of a potentially valuable railroad employee is attractive, the Carrier reasonably characterized the Claimant's action as indistinguishable from the type of falsification that would be carried out by an employee who intended to deceive the Carrier in order to disguise negligent or intentional dereliction of duty. Even if the Claimant's intent was otherwise, his entry of specific track inspection information for July 3, 2006 when he admits not having conducted such inspections constituted serious misconduct that the Carrier cannot reasonably be expected to ignore. Such misconduct leaves no basis for

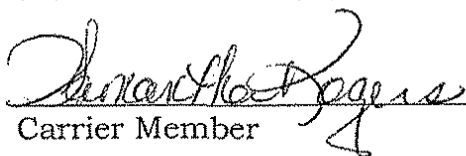
the Board to declare the Carrier's determination invalid and thus overturn the penalty imposed. Perhaps the Carrier itself will relent in view of the Claimant's evident remorse and his potential for future redemption as a valuable employee. However, based on the evidence submitted, there was just cause for the discharge of Richard L. Algren. The instant grievance is hereby denied.

We so find.


Daniel F. Brent, Impartial Chair

Dated: 9-29-08

(☒) I concur. () I dissent.


Carrier Member

Dated: 10/31/08

(☒) I concur. () I dissent.


Organization Member

Dated: 10/13/08