

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 112, (Case No. 112)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

**William R. Miller, Chairman & Neutral Member
Joy E. Mendez, Carrier Member
David D. Tanner, Employee Member**

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing May 17, 2010, when Claimant, Joseph A. Hamel (1604776), was issued a 30-day Record Suspension with a 1 year review period, for failure to take specific precautionary actions while performing hot work on open deck bridges. The Carrier alleged violation of EI 1.7.2 Job Preparation - General and EI 1.7.3 Specific Precautionary Actions.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated with seniority, vacation, all rights unimpaired and wage loss commencing May 17, 2010, and continuing forward and/or otherwise made whole." (Carrier File No. 14-10-0147) (Organization File No. 100-13N1-1044.CLM)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On May 17, 2010, Claimant was directed to attend a formal Investigation on May 24, 2010, which was mutually postponed until July 1, 2010, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to prepare for performing hot work activities and, failure to take specific precautionary actions while performing hot

work on open deck bridges resulting in violation of Engineering Instruction rules 1.7.2 and 1.7.3"

On July 16, 2010, Claimant was notified that he had been found guilty as charged and was assessed a 30-Day Record Suspension with a one year probationary period.

The facts indicate that the Claimant and his co-worker B. K. Baird were welding on a bridge at Milepost 245.2 and approximately three and one half hours after performing hot work on that structure a fire broke out that did significant damage.

The Board notes this is a companion case to Award No. 111 and is identical involving the same incident with the only exception being that each case involves a different Claimant. For the sake of brevity the Board will not reiterate the parties respective arguments as they are the same in this dispute as set forth in the aforementioned Award.

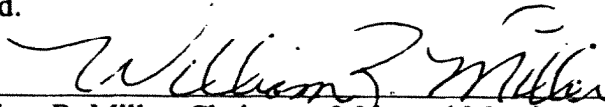
The Board has thoroughly reviewed the transcript and record of evidence and is not persuaded by the Organization's procedural argument and it is determined that the Investigation and appeal process met the guidelines of Rule 13(a) the Discipline Rule and Appendix No. 11.

The Board will not set forth its rationale, but instead refers the parties to Award No. 111 as that reasoning is equally applicable to this case and will be followed. The Board does reiterate that substantial evidence was adduced at the Investigation that the Claimant did not fully comply with EI 1.7.2 and 1.7.3 on May 7, 2010.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately 6 years of service with a good work record. The Board finds and holds that the incident was of a serious nature and the discipline assessed was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The discipline exercised was not excessive, arbitrary or capricious, therefore, it will not be set aside and the claim will remain denied.

AWARD

Claim denied.


William R. Miller, Chairman & Neutral Member


Joy E. Mendez, Carrier Member


David D. Tanner, Employee Member

Award Date: May 21, 2013