

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 94, (Case No. 94)**

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

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, 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 April 29, 2011, when Claimant, Jack H. Ruggles (6468623), was issued a Level S 30-day Record Suspension with a 3 year review period and his seniority is restricted from positions of authority for his report of a multiple work group clear of Form B limits with no notification from the Employee In Charge of that work group clear and documentation of an incorrect time clear on Form B #6014 before the Employee in Charge of that work group reported clear on February 14, 2011. The Carrier alleged violation of MOWOR 6.3 Track Occupancy.**
- 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 compensated for his lost time and expense and otherwise made whole.**
(Carrier File No. 14-11-0116) (Organization File No. 110-13N1-1115.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 February 17, 2011, Claimant was directed to attend a formal Investigation on February 24, 2011, which was mutually postponed until March 8, 2011, after which it was recessed and reconvened on March 30, 2011, 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 report of a multiple work group clear of Form B limits with no notification from the Employee In Charge of that work group clear and, documentation of an incorrect time clear on Form B #6014 before the Employee In Charge of that work group reported clear, on the Lafayette Subdivision, at Mile Post 155 in Duson, Louisiana, on Monday, February 14, 2011 at approximately 1515 hours, resulting in a Critical Rule Violation and, violation of Maintenance of Way Operating Rule 6.3, Track Occupancy...."

On April 29, 2011, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30-Day Record Suspension with a three year probationary period.

It is the Organization's position that the Carrier did not meet its burden of proof. It argued that the record reveals that there was a mis-communication wherein someone identified themselves as Assistant Roadmaster Wilson and released their protection to the Claimant. It was suggested that Foreman Hopkins may have inadvertently done it, thus, it was reasoned the Claimant was not at fault when he released Wilson's protection at 1515 on February 14, 2011. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that on February 14th, the Claimant was handling the Form B protection for himself and other gangs. It asserted that two of the gangs in the multiple authority protected by the Claimant's Form B were Assistant Roadmaster T. Wilson and Foreman S. Hopkins. It argued that it was determined during the Hearing that the Claimant did not verify who he was talking to at 1515 and cleared Mr. Wilson from the Form B, even though Wilson and his gang were still on the track working. It further stated that it was not until the Dispatcher got involved at 1525 and had a three way conversation with the Claimant and Wilson that it was determined that Wilson and his crew had been unprotected for 10 minutes. It further argued that it was discovered during Mr. Wilson's testimony when he submitted his itemized cell phone bill for the time period in dispute that there were no calls placed to the Claimant between 1515 and 1525, verifying he had not asked the Claimant to release him from the Form B protection and Claimant admitted his telephone number was not on Wilson's cell phone bill. It closed by asking that the discipline not be disturbed and the claim remain denied as the Claimant had left employees and equipment working on a track without protection.

The Board has thoroughly reviewed the transcript and record of evidence and has determined that the Investigation and appeal process met the guidelines of Rule 40 the Discipline Rule of the former BN Agreement and Claimant was afforded his "due process" Agreement rights.

There is no dispute between the parties that Assistant Roadmaster Wilson and his gang were unprotected from 1515 to 1525 on February 14, 2011. The Claimant testified on page 40 of

the transcript he talked to someone who identified himself as Assistant Roadmaster Wilson requesting that he be removed from protection.

On pages 28 - 36 of the transcript Roadmaster R. Baker testified that he had interviewed all of the employees involved in the incident under investigation shortly after its occurrence as to what had transpired. Baker was further questioned about some additional information he acquired later about the incident as follows:

"Brian T. Poston: Did you have any subsequent conversation with Mr. Hopkins concerning this event?"

Raymond Baker: Uh, not that day, but a couple of days later, yes. He called me and he said that after talking to Jack at the motel, that he may have been so busy and Jack might have said is this Wilson and he might have said yes."

On pages 48 of the transcript Foreman Hopkins was questioned as follows:

"Brian Poston: Was there ever any confusion about who he was talking to? Specifically, did, uh, either you or Mr. Ruggles, uh, have any confusion about it was Wilson or if it was Hopkins?"

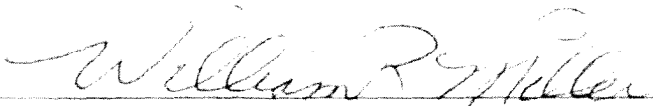
Shawn Hopkins: I just figured he knew my voice and that I was Hopkins so, like I said, I called him to release it and get off the Form B. And then when he called me back I said, Jack, I already released at 1515....(Underlining Board's emphasis)

The record is clear Assistant Roadmaster Wilson never called the Claimant to be released from the Form B protection whereas Foreman Hopkins did. There was no showing in the record that anyone called the Claimant after his first conversation with Hopkins. Instead the transcript substantiates that after Hopkins requested the release the Claimant then called Hopkins back because he thought he had conversed with Wilson, but when Hopkins told the Claimant that he had previously been released the Claimant should have realized that he had mistakenly released Wilson rather than Hopkins. Assuming for the sake of argument that Hopkins might have said something to the Claimant in their first phone call that made the Claimant think he was talking to Wilson the Claimant should have recognized after the second call that both of his conversations were with Hopkins and he should have taken immediate action to protect Wilson and his crew. The Board will not reiterate any other arguments of the parties as the Carrier's rendition of the facts and its other arguments are on point and further validate the fact that the Claimant left Wilson and his crew and equipment working on a track without Form B protection. Substantial evidence was adduced at the Investigation that the Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 38 years of service with 13 prior disciplines with his most recent discipline being similar to the instant case wherein he was assessed a Record Suspension in October 2010 for failure to provide proper protection for his work group that resulted in one of his employees being out of his limits. The discipline assessed against the Claimant in this instance will not be set aside as it was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) and it was not excessive, arbitrary or capricious. The claim will remain denied.

AWARD

Claim denied.


William R. Miller, Chairman & Neutral Member


Samantha Rogers, Carrier Member


David D. Tanner, Employee Member

Award Date: 9/24/2012