

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 99, (Case No. 99)**

**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 March 25, 2011, when Claimant, Richard L. Dorsey (177954), was issued a Level S 30-day Record Suspension with a three year review period, for failure to properly pin and lock workheads on the Anchor Spreader causing damage to the machine on February 16, 2011. The Carrier alleged violation of EI 14.3.3 Maintaining Roadway Equipment and MOWOR 6.50.3 Equipment Components Clear.**
- 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. 14-11-0103) (Organization File No. 100-13C2-118.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 18, 2011, Claimant was directed to attend a formal Investigation on February 25, 2011, which was mutually postponed until March 8, 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 failure to properly pin and lock workheads on the Anchor Spreader, Machine Number X0100536, to which you were assigned

on Wednesday, February 16, 2011, at approximately 1300 hours at Mile Post 190.77, in Roanoke, Louisiana, resulting in approximately \$100 damage and, violation of Maintenance of Way Operating Rule 6.50.3, Equipment Components Clear and, Engineering Instructions Rule 14.3.3, Maintaining Roadway Equipment."

On March 25, 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 transcript indicates there was a great deal of discussion about "work mode" versus "travel mode" and the common practice on the gangs did not dictate that chains be applied for the travel duration of 65 feet across an eight board crossing where the work continued right up to the edge and began immediately after the crossing. It further argued that the Claimant, a dedicated employee, who never denied the incident occurred was saddled with a "serious rule" violation for a minor accident that resulted in no injuries, no lost production and an estimated \$100 repair costs. It concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that Claimant failed to properly pin and lock the work heads on the Anchor Spreader machine he was operating that caused the work heads to lower and strike a road crossing resulting in damage to the machine. It further argued that the Organization's argument that there was only a \$100 damage to the machine was taken out of context as Roadmaster J. Hanson's testimony at the Hearing was only referring to the broken lights when he mentioned the \$100, but review of the transcript reveals that he went on to state that the work head was bent, the hose was broken and the machine was wrecked, therefore, according to it, "wrecking a machine" is considered a serious violation. It closed by asking that the discipline not be disturbed and the claim remain denied.

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 the Claimant was involved in an accident on February 16, 2011, at Mile Post 190.77. On page 25 of the transcript the Claimant was questioned about the incident as follows:

"Dave Cunningham: Okay, Mr. Hanson had mentioned the term pinned and locked. Were pin-, were the workheads pinned and locked, as required by the rule.

Richard L. Dorsey: Well they was, they was pinned up to the maximum height,

and till, until I bumped it. They wasn't locked because the chains, I didn't lock the chains that holds the workheads up from hitting anything. I didn't, I didn't lock them up."

On page 26 of the transcript the questioning of the Claimant continued as followed:

"David Cunningham: Had you locked the pinhead, I mean locked the workheads, even with your mid-section momentarily striking one of those levers, would, would the chains have prevented the workheads from lowering.

Richard L. Dorsey: Yes, sir.

David Cunningham: Mr. Dorsey, are you familiar with Maintenance of Way Operating Rule 6.50.3?

Richard L. Dorsey: Yes, sir.

David Cunningham: Did you comply with that rule, sir?

Richard L. Dorsey: No."

There was considerable discussion about whether Claimant's machine at the time of the incident was in "travel mode" or "work mode" and did it need to be chained before it moved over the crossing. On pages 35 and 36 of the transcript Roadmaster Hanson was asked that question and answered as follows:

"It would, it, I think it would pertain to both modes. When you're go across a road crossing you're in travel mode. Your work starts when you get on the other side of the crossing. Your work ends when you get to the crossing. When you're going through the crossing you're not doing any work, you're just traveling from one side to the other. In which case you gotta pin up and lock up before going across switches, or road crossings."

Hanson's testimony was not effectively rebutted that when Claimant ended his work on one side of the crossing he should have chained up while he traversed the crossing before starting work on the other side. Hanson's testimony coupled with Claimant admission of fault proves substantial evidence was adduced at the Investigation that the Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. The Organization argued that the accident was a minor whereas the Carrier stated it was serious. Roadmaster


Hanson described the damage to the Claimant's machine on pages 17 and 18 of the transcript in pertinent part as follows:

"...And one of the, one of the lights was broke and hanging down. And I think it was \$100 worth of damage on the machine. The workhead, the cylinder that raises and lowers the workhead was bent. And went up there and went to every, everything else was okay, but the machine was wrecked. I think there was a broken hose on the machine."

Hanson testified he thought there was \$100 worth of damage to the Claimant's machine and the Notice of Investigation stated in pertinent part, **"...resulting in approximately \$100 damage..."**, therefore, the Board is satisfied that the damage to the machine was minor in nature. The Board does not excuse the Claimant's error, however, in this instance it finds and holds that the discipline was excessive and is reduced to Formal Reprimand with a one year probationary period that is progressive, corrective and in accordance with the spirit of the Carrier's Policy for Employee Performance Accountability (PEPA). The Board also recommends that the Claimant be careful in the future to adhere to all Carrier Rules, Safety Rules and Policies.

AWARD

Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David D. Tanner, Employee Member

Award Date: 9/24/2012