

PUBLIC LAW BOARD NO. 7585

**Case No. 4/Award No. 4
Carrier File No.: 10-12-0078
Organization File No.: C-12-D040-1
Claimant D. Zaiser**

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

FACTS:

David Zaiser was hired in 1984 as a Trackman. He was Foreman of a mini tie gang at the Gillette Yard in Gillette, Wyoming when this case arose.

On July 7, 2011 Gillette Roadmaster Jay Williams was part of an operations testing team. He came upon Claimant's gang and found machines on the tracks without on-track protection. He immediately posted a flag man to protect the gang. Claimant was not there at the time, but when Claimant arrived, he took responsibility for the failure to provide on-track protection. On October 7, 2011 he was issued a Level S 30-day record suspension with a three year review period.

The rule alleged to have been violated is MOWOR 6.3.2: "On tracks other than a main track, controlled siding, or any track where a block signal system is in effect, Roadway workers may establish working limits by providing protection using one or a combination of the following:

- All switches that provide direct access to the working limits are lined against movement, tagged, and effectively spiked, clamped, or locked with an effective locking device;
- A red flag or light and a derail locked in the derailing position are placed at least 50 feet from the work location * * *;

- Remotely controlled switches, ... have been lined against movement to the affected track and locking/blocking devices have been applied to the respective switch controls;
- A flagman is positioned to hold all trains and on-track equipment clear of the working limits;
- A discontinuity in the rail is created to prevent movement into the working limits;
- Working limits are established on a main track, controlled siding or any track where a block signal system is in effect to prevent movement into working limits established on other than main track;
- A train or engine is flagged to a stop and its crew issued instructions to make all movements only as directed by the employee in charge of the working limits."

CARRIER POSITION:

The Carrier notes Claimant's gang did not have protection and there was a switch engine in the vicinity. Claimant admitted this at the time he was approached, and knows it was his responsibility to ensure the rules were followed. Because he was responsible and left his gang unprotected, the discipline was warranted.

ORGANIZATION POSITION:

The organization notes there are conflicts in the testimony of the Carrier's witnesses. It maintains Claimant had track and time authority on Main Track 1 and had spoken to the switch engine as well. This constitutes adequate protection. He only admitted a failure of protection when approached because he became flustered and confused. He was not at the location when the switch lock was removed from the switch and therefore should not be blamed for this action. He fully briefed his gang at the beginning of the day and had no chance to give another briefing before Williams appeared on the scene. The Conducting Officer prejudged the case and badgered witnesses to try to get the answers she wanted. The discipline was excessive and without merit.

DECISION:

The rule in question gives several options for providing protection. The evidence is clear that not all switches providing access to the track were lined against movement, spiked, clamped or locked, nor was there a red flag, derail or other discontinuity in the rail to prevent movement. There was no flagman until Williams posted one. Hence, the only arguable protection was that working limits were established on the main track through communication with the local.

Williams testified that two of the gang members thought the switch ahead had been lined against them and locked out. Only one knew this was not the case and thought they were getting ready to move onto the main line. The discrepancy is troubling; the gang was not briefed about their status before Claimant left.

When Claimant returned and Williams asked, Claimant said they had a switch locked out earlier in the morning but took the lock off and moved the gang in preparation of moving to the main line to do work. This statement is also reflected in Williams' contemporaneous memo. This establishes that Claimant knew the switch lock had been taken off and why; he was not surprised to find a switch unlocked and did not learn it from Williams. He already knew about it when he drove up.

Since he apparently obtained track and time authority while gone, he left his gang with the switch unlocked while he was getting the authority. His reaction when he was confronted by Williams is consistent with this conclusion. At the time he left, the switch was not locked and he had no track authority. Claimant failed to provide on-track protection in violation of MOWOR 6.3.2.

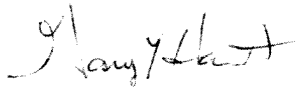
AWARD:

The claim is denied.

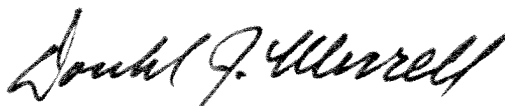
March 18, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member
March 20, 2013



D. J. Merrell, Carrier Member