

PUBLIC LAW BOARD NO. 7585

**Case No. 7/Award No. 7
Carrier File No.: 10-11-0097
Organization File No.: C-11-D040-4
Claimant: J. Clark**

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

FACTS:

Claimant Jared W. Clark worked as a Track Inspector when this case arose. He inspected the 1802 Track in Keokuk Yard on November 30, 2011 and found it to be free of defects. On December 5 a derailment occurred, which was attributed to wide gauge from defective ties. The Carrier determined that Claimant failed to inspect and protect track defects as required and issued a Level S 30-day record suspension with a one-year review period.

CARRIER POSITION:

In the Carrier's view, it is the responsibility of the track inspector to inspect the tracks and take remedial action. A tie defect was the cause of the derailment, hence Claimant failed in his responsibilities and the discipline was warranted.

ORGANIZATION POSITION:

The discipline should be overturned first because the Carrier failed to furnish the Union with a copy of Claimant's personnel record. Further, the Carrier prejudged the case in its conduct of the hearing. The Carrier and two supervisors were aware of the tie conditions. There were many factors to which the tie defect can be attributed, including weather, and the number of trains and tonnage that rolled over the location. It was never proved that Claimant was out of compliance with Engineering Instructions. Further, he did not receive the requisite five day notice of hearing since his notice was emailed after he had left work and was not received before the deadline.

DECISION:

During the investigation hearing, the matter of notice was raised. The Organization was offered the opportunity to request a postponement and specifically declined. As a result, the Organization has waived any objection regarding adequacy of notice. The conduct of the hearing did not fall outside the parameters of an investigation.

Though a tie defect was indicated after the derailment occurred, there is no evidence that this defect existed on the day of Claimant's inspection. Defects arise periodically, which is the reason for routine inspections in the first place. There was no evidence regarding the likelihood of other potential causes of the track defect, nor was there any evidence about the number of trains or tonnage rolling over the location in question. The Organization's contention that other carriers use the 1802 Track was unrebutted. While it is certainly possible that the 1802 Track had a tie defect on November 30, it is also entirely possible that the defect arose after the track was inspected and found to be in compliance. As a result, it has not been proved more likely that the defect was there on November 30 or that Claimant failed in his responsibilities to inspect and protect.

AWARD:

The claim is sustained. The 30-day record suspension with one-year review period shall be revoked.

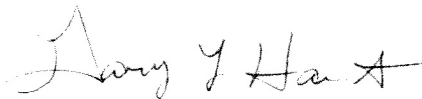
ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

March 18, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member



D. J. Merrell, Carrier Member