

BNSF Railway (Former Burlington Northern Railway)
- and -
Brotherhood of Maintenance of Way Employees

Public Law Board No. 7585
Case No. 14
Award No. 14
Carrier File No. 10-12-0313
Organization File No. : C-12-D040-12
Claimant: R. Williams

FACTS:

MOWOR 6.3.1 states as follows:

When receiving an authority that is 'joint,' display red flags if working limits are established within overlapping authority limits. Prior to occupying any overlapping authority limits that are 'joint,' all working limits (including your own working limits) within the overlapping authority limits must be documented on the 'Working Limits form.

The MW Authority to Occupy Track form states as follows on the back:

When using 'joint' authorities, all working limits (including your own working limits) must be documented.

(At Time) Time information is repeated back and acknowledged
(Clear Time) Time notified that working limits are clear by that movement or employee

This form must be filled out when working limits are established within authority limits including the employee in charge when the working limits overlap. When a line on this form is no longer in effect, the employee will draw a line through that entire line to designate that it is no longer in use. Form(s) shall be retained for entire tour of duty.

On March 15, 2012, Foreman Richard Williams had track authority when he was notified that his working limits were shared with Jerry Moos and Wayne Meidinger. They held a briefing so Moos and Meidinger, who were approaching Williams' work area, knew where the limits were. When they arrived, they noted no red flags were displayed to mark the limits, and upon further investigation they learned Williams had not filled out the back of the working limits form. As a result he was given a Level S 30-day record

suspension with a 3-year review period. His Notice of Suspension states as follows in pertinent part:

As a result of investigation held on February 15, 2012 at 1000 hours at Conference Room, 3700 Globeville Road, Denver, CO, 80216 you are hereby assessed a Level S 30 Day Record Suspension for your failure to document working limits on the "Working Limits" form after establishing working limits within a joint overlapping authority - a Critical Decision, at MP 516.6 on the Brush Subdivision at approximately 1345 hours on January 13, 2012, while assigned as Section Foreman, Keenesburg, Colorado.

It was his first disciplinary action in his four plus years of service.

CARRIER POSITION:

The Carrier contends the hearing was fair and impartial, and finds it absurd to maintain the Hearing Officer must come to a hearing blind. It asserts Williams was in clear violation of MOWOR 6.3.1 and has admitted he did not fill out the "working limits" section of his Maintenance of Way Authority to Occupy Track form. In the Carrier's view, this is a serious event. Violation of track and time is extremely grave, it asserts, because the result could be derailment, collision, injury or death. It notes that because the claimant admitted his guilt, the claim is actually a request for leniency, and as such, is a matter for the exclusive discretion of the Carrier.

ORGANIZATION POSITION:

The Organization maintains the hearing was irreparably flawed when the hearing officer met with witnesses prior to hearing. It further argues the hearing was prejudiced by the hearing officer's refusal to rule on objections and harassment of the Claimant. It contends there was no danger or serious violation of track and time because all concerned knew exactly where the working limits were; there was no danger to anyone at any time. It further points out that Claimant did have his working limits documented, though it was only on the front of the form. It argues the 30-day suspension with a three year review period is harsh and excessive.

DECISION:

The Organization protests the fact that the Hearing Officer had access to information about the case prior to the hearing. The Board does not find this to be prejudicial. No case can be decided until all the information has been gathered, and it is inevitable that information is gained incrementally. To have access to information is very different from

prejudging a case. In order for Claimant to be afforded a fair and impartial hearing, it is not necessary for the Hearing Officer to enter the hearing room devoid of information about the case.

Claimant's Notice of Suspension charged him with failure to document his working limits. It did not charge him with failure to display red flags at his working limits. As a result, the Carrier has waived the alleged offense regarding the flags, and the alleged offense is limited to failure to document working limits.

MOWOR 6.3.1 expressly and clearly requires that working limits be documented. However, it does not require any particular form or any particular section of a form to be used. It simply requires documentation. Of course, such a rule must be reasonably interpreted; jotting limits down on napkins or paper airplanes would hardly be adequate to meet the intent of this rule. The rule is designed to insure that the sharing of joint track authority is properly documented in the Company's records so that it can clearly and readily be referenced by persons with a need to know. Hence, to ensure that employees know where to look, the Carrier is within its rights to insist that its designated forms be used.

However, the language on the back of the form is not and cannot be interpreted as a disciplinary rule. Rules cannot be made and enforced by putting them on the backs of forms. Rather, the rules employees must abide by are well known to be located in the Maintenance of Way Rule Book. To expect employees to research the Company's forms to learn rules when a set of rules already exists would be unreasonable and onerous. As a result, the requirements stated on the form are advisory only.

This is not to say they are meaningless. If an employee is repeatedly told to fill out the back of the form and fails or refuses to do so, his actions could constitute failure to follow instructions. Claimant in this case has not repeatedly refused to fill out the back of this form; this is the first instance described in the record of such a lapse.

Claimant Williams filed a job briefing form that specified that the limits being shared went from Hudson to Tonneville. The MW Authority to Occupy Track form for Jan. 13, 2012 was filled out on the front, with the Tonneville and Hudson limits clearly noted. There is no new information to be added to the back of the form; it is redundant of information found on the front of the form. As a result, it cannot be said that Claimant Williams failed to document working limits; he did and those limits are found on the front of the form.

Claimant's acknowledgment that he made a mistake does not constitute confession to commission of a rules violation. It follows that his claim of unjust discipline is not equivalent to a claim for leniency.

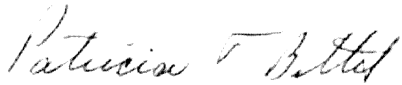
AWARD:

The claim is sustained. The discipline shall be removed from Claimant's record.

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.

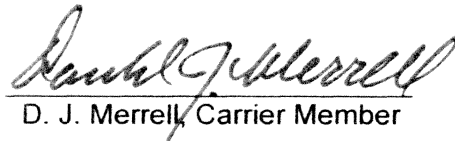
August 30, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Organization Member


D. J. Merrell, Carrier Member