

PUBLIC LAW BOARD NO. 7293

PARTIES) SMART - TRANSPORTATION DIVISION
TO)
DISPUTE) BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Appeal on behalf of Memphis, Tennessee Yardman L. E. Reddick for removal of a Level S 30 Day Record Suspension and 3 Year Review Period from his personal record and pay for all time lost as the result of an investigation held on September 13, 2010. (Organization File D-1909; Carrier File 55-11-0004)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The discipline on appeal was assessed the Claimant in a Carrier determination that testimony and exhibits presented at a hearing conducted on September 13, 2010 show that on July 25, 2010 while the Claimant was responsible for point protection of a shoving move that it was a failure on his part to have observed the position of a track derail that resulted in the derailment of a locomotive unit that was a part of the shoving movement. The Claimant was held by the Carrier to have violated General Code of Operating Rule (GCOR) 6.28, Movement on Other than Main Track, and GCOR 6.5, Shoving Movements.

The Organization raises various procedural objections concerning the manner in which the Carrier's hearing officer conducted the investigation. The Board has thoroughly reviewed all such Organization contentions. We find the Organization arguments to either be without merit or of such a nature as to be insufficient to conclude that the Claimant was denied benefit of a fair and impartial hearing.

In defense of the Claimant the Organization says that it was never shown at the investigation that the locomotive for the Claimant's train was derailed by the permanent derail mounted near where the locomotive derailed. It says the fact that screws holding the derail to the ties were forcefully pulled out ignores the fact that had the locomotive wheel climbed the derail's ramp that the weight of the locomotive would have served to hold the derail in place rather than ripping it out by its screws.

The Organization also urges the fact that the Claimant's Engineer testified that he placed the derail in the non-derailing position prior to boarding the locomotive clearly indicates that something other than the derail was responsible for derailing the locomotive. In this respect, the Organization says that wheel marks on the tie plates indicate that the locomotive derailed some distance from the derail's location and that it went unexplained at the hearing as to why the derail was found upside down and turned 180 degrees.

It is the position of the Carrier that testimony of the Carrier officers who investigated the incident clearly establishes that the derailment was due to a human failure and not some track condition, as the Claimant and the Organization urge in defense of the Claimant.

In study of Carrier argument, the Board especially finds noteworthy testimony of Track Foreman Mitchell, an employee and supervisory track official with 16 years of service. Track Foreman Mitchell said the track had no wide gage or tight gage and was "probably the best railroad track" that he had seen in a long time. Track Foreman Mitchell also testified to photographs of the incident showing fresh wheel flange marks on the derail as indicating that the derail was run over and ripped off the ties, offering there was no question in his mind that the derail caused the locomotive derailment.

As concerns Claimant and Organization argument about the derail being found upside down and turned 180 degrees, the Board also finds significant the following testimony of Track Foreman Mitchell in response to a question as to whether it would be possible for an engine to hit a derail, pull it out of the track, and shove it a little ways before it fell off the track:

Yeah, I mean, if, uh, you know, with it being an engine and not a car, the derail, when the derail is run over, in this scenario, in this case right here just looking at what I saw even there on the track, is that when the derail got ran over, there's an abrupt stop. Well, you got undercarriage, you got a lot of stuff, of which you got pictures right here, it shows stuff that hangs down, it'll catch that derail, rip that derail up like it did. And, it can shove, it'll, it'll pull it underneath the car, it'll move it down the track with it, yes.

In study of the record the Board also finds somewhat questionable the Claimant's contention about the manner by which he was protecting the point of the shoving movement. The Claimant said that he was ahead of the movement looking at switches while watching the movement from the ground; yet upon being asked "how did you know it derailed," the Claimant said:

Well, after I, after I heard it, uh, after I heard it, something hit the ground, I turned and looked at it and an engine was on the ground.

In the light of the above considerations and overall study of the record the Board finds that it clearly establishes that the derailment accident resulted from the Claimant's failure to have properly positioned himself to protect the point of a shoving movement so as to have been able to observe the position of the derail and therefore have been able to stop the movement within half the range of vision as set forth in the General Code of Operating Rules. That the Claimant had reportedly been told by his Engineer that the latter had placed the derail in a non-derailing position did not serve to absolve the Claimant from placing himself in a position where he could visually observe and fully protect the shoving move.

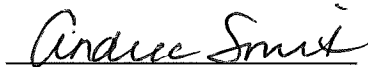
In the circumstances of record, the Board finds no basis for overturning discipline as assessed by the Carrier.

AWARD:

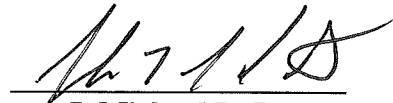
Claim denied.



Robert E. Peterson
Chair & Neutral Member



Andrea N, Smith
Carrier Member



J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: 9/26/17