

PUBLIC LAW BOARD NO. 7293

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

STATEMENT OF CLAIM:

Appeal on behalf of Birmingham, Alabama Yardman R. C. Moye 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 November 11, 2010. (Organization File D-1916; Carrier File 55-11-0012)

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.

While assigned to a yard job at Birmingham, Alabama on October 21, 2010 the Claimant reportedly sustained a hand injury while releasing a handbrake on the side off an auto rack car, a chain hitting the index finger of his left hand. After being accorded medical attention and upon returning to the Birmingham Terminal offices the Claimant completed an on-the-job injury report and participated in a Carrier supervisory requested on site reenactment as to the manner in which he had sustained the injury.

The Carrier says subsequent mechanical inspection of the handbrake revealed no mechanical defects with the handbrake. Further, the Carrier says that a review of audio recordings and the event recorder for the locomotive engine assigned to the Claimant's tour of duty on the date in question showed that the auto rack car on which the Claimant said he had sustained injury to his hand was moving at two mph when the Claimant released the handbrake, a significant matter that the Carrier says the Claimant had not included in his injury report or during the reenactment of the injury.

When the Claimant returned to work the following day he was interviewed about the Carrier's subsequent findings and acknowledged or, as the Carrier says, admitted, that the car was in fact slowly moving when he released the handbrake.

By notice dated October 28, 2010 the Claimant was instructed to report for a formal investigation in a charge of alleged improper procedure used in operation of a handbrake resulting in personal injury and dishonesty in a failure to disclose pertinent information during an interview and physical reenactment involving the injury with Terminal supervisory officials.

Following the investigation, which was conducted on November 11, 2010, the Claimant was notified that the Carrier had determined testimony and exhibits to show that he was guilty as charged and that he was assessed the discipline here on appeal, a Level S 20 Day Record Suspension and 3 Year Review Period. The Carrier held the Claimant to have violated GCOR 1.6, Conduct, GCOR 1.2.7, Furnishing Information, TY&E Safety Rule 13.6.2, Hand Brakes on Moving Cars, and GCOR 13.6.3, Position to Operate.

It is the position of the Carrier that the Claimant was negligent and careless of his personal safety when admittedly there was no emergency need for the Claimant to have released the handbrake while the car was moving and dishonest when he failed to give all pertinent information involving the alleged injury.

In defense of the Claimant the Organization submits that the Carrier investigating officers are not shown to have questioned the Claimant as to whether the car was moving during their interview of the Claimant or at the scene of the reenactment. In this respect the Organization submits that at the hearing when the Claimant was questioned as to why he had not said that the car was moving that the response of the Claimant was:

On that night, I was more or less answering questions that I was asked, and that question was not asked of me. When I was asked to do the reenactment I let them ask the questions and I answered them as I was asked.

And that, that thought never, it never occurred to me to put that in there, because I was just asked and answered what I was asked.

He Organization also submits that in further testimony at the hearing the Claimant said it took one or two seconds to release the side of the car handbrake as the car went by him and that he did not have to lean into the car or physically move with the car while releasing the handbrake.

The Organization further says it was not necessary the Claimant break the plane of the moving car to release the handbrake since it was a side-mounted handbrake on an auto rack car. In this same respect, the Organization says that had the Claimant been observed releasing the handbrake by a Carrier supervisory official it would have been handled as a simple operations test failure, not in a disciplinary hearing.

In the opinion of the Board, study of the record shows that it was only after their initial questioning of the Claimant and a stated five minute reenactment that the investigating officers realized that they had failed to ask the Claimant as to whether the train was moving, and only then decided to review the audio and engine event recorder so as to charge the Claimant with alleged improper procedure in operation of a handbrake resulting in personal injury and alleged dishonesty in a failure to disclose pertinent information during an interview and reenactment of the incident.

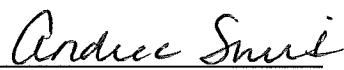
The Board also finds it significant in study of the record that when on the day following the injury the Claimant was asked if the car was moving at the time of the injury, that he said that it was moving; this straightforward and honest response being given by the Claimant before the investigating officers told the Claimant that they had meantime reviewed the audio and engine event recorder to find that the car was moving at two mph.

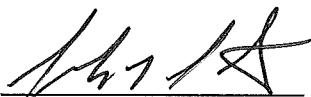
In the particular circumstances of record, the record failing to establish substantial reason to conclude that the failure of the Claimant to have mentioned in his report or at the time of the reenactment of the manner in which he had sustained a hand injury the fact that the car on which he had released the handbrake was moving, the claim will be sustained.

AWARD:

Claim sustained.


Robert E. Peterson
Chair & Neutral Member


Andrea N. Smith
Carrier Member


J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: 9/26/17