

**PUBLIC LAW BOARD NO. 7293**

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

**STATEMENT OF CLAIM:**

**Appeal on behalf of St. Louis, Missouri Yard Foreman P. R. Sellars 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 February 9, 2011. (Organization File D-1944; Carrier File 55-11-0040)**

**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.**

**In the performance of operations testing of yard crews at Lindenwood Yard in St. Louis, Missouri, on January 8, 2011 Carrier Trainmasters Del Toro and Lamprecht set up a banner between tracks on the yard lead that required an approaching train or shove move to stop short of the banner.**

**There is no question in overall study of the record that at approximately 0045 hours on January 8, 2011, while assigned as the Foreman of Remote Control Operation (RCO) yard job YSTL3332-07A, a job that operates without an Engineer, that the Claimant failed to stop a shoving move that he was responsible to protect short of the banner. The RCO shove move ran over the banner and did not come to a stop until notified to do so by Trainmaster Del Torro, the Claimant then bringing the shove move to a stop about four to five car lengths past the track location of the banner.**

**It was testimony Trainmaster Del Toro at the company hearing that when he approached the Claimant after the shove move stopped that the Claimant expressed responsibility for the failure to have stopped the shove short of the banner.**

**In examination at the hearing the Claimant acknowledged that he was the operator in control of the RCO move, offering that he did not see the banner from where he had positioned himself on the ground at the 12 switch; the first time he saw the banner was after he had been instructed to stop the move and accompanying the**

Trainmasters to the location where the banner had been placed. On further questioning the Claimant acknowledged that he had not provided proper protection for the shoving move in compliance with GCOR 6.5, Shoving Movements, and 6.5.1, Remote Control Movements. Moreover, in a closing statement at the hearing the Claimant, among other things, said: "I do take full responsibility for the incident."

The Organization, as it did at the company hearing, raises various procedural objections relative to the manner in which the Carrier has handled this case, asserting that there was a failure to provide all witnesses; the hearing was not conducted in a fair and impartial manner; the incident would not have occurred if RCO Zones were in place at Lindenwood Yard; the Claimant's representative was harassed by the conducting officer; and, the Carrier failed to provide a complete and error free transcript.

The Board has carefully reviewed these procedural challenges. It is evident, as the Carrier submits, that the Organization's requested witnesses were not shown to have had any material knowledge to depart involving the charge of record in that the incident the subject of the charge was not shown to involve what was being sought by the presence of such witnesses, i.e., the workings of an RCO committee and the existence of RCO zones at some other Carrier yards.

The Board is also satisfied in study of the transcript that the Claimant was provided a fair and impartial hearing. The Claimant was provided timely notice of the hearing; the nature of the offense was set forth in writing so as to enable the Claimant to prepare a defense against the charge; although the hearing was scheduled to begin within the time limit prescribed by agreement rules, the Claimant had benefit of a postponement to additionally prepare a defense; it is evident that the Claimant and his representative came to the hearing prepared to defend against the charge of record; the Claimant and his representative were given full opportunity to examine witnesses called to the hearing; and, notwithstanding an admission of guilt to the charge of record, the Claimant and his representative offered into the record what they basically offered as mitigating circumstances that be considered as having contributed to the incident.

We also find nothing of record to support the contention that the representative for the Claimant was harassed by the conducting officer. Rather, it appears that the conducting officer, after calmly and patiently having explained to the Claimant's representative that he need stick to the subject matter that was being investigated was left with no recourse but to advise the representative that a failure to do so would be considered as appropriate grounds to recess the hearing and have another representative come forward to represent the Claimant at the hearing.

Lastly, as concerns the Organization protest that the written copy of the hearing transcript is not complete and error free, nothing of record shows in what manner

the Organization contends that the transcript is not an accurate recording of all testimony and exhibits presented at the hearing.

The record supporting the conclusion that the Claimant failed to properly protect the RCO shoving move for which he was in charge, the Board finds no reason to disturb discipline as assessed by the Carrier. The claim will, therefore, be denied.

**AWARD:**

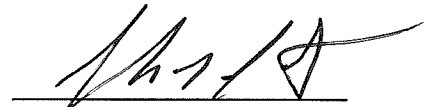
**Claim denied.**



**Robert E. Peterson**  
**Chair & Neutral Member**



**Andrea N, Smith**  
**Carrier Member**



**J. Michael LaPresta**  
**Organization Member**

**Fort Worth, TX**

**Dated:** 9/20/17