

PUBLIC LAW BOARD NO. 7293

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

STATEMENT OF CLAIM:

Appeal on behalf of St. Louis, Missouri Engineer J. A. Yancey 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 January 28, 2011. (Organization File D-1947; Carrier File 55-11-0043)

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.

Appeal of discipline in this case arises out of the same incident the subject of earlier Case No. 164 involving the failure of a train to have been stopped prior to the train's movement over a public grade crossing where the crossing had been listed in a General Track Bulletin and Form C as having disabled and inoperative warning equipment. Whereas Case No. 164 involved the train's Conductor, this case concerns Engineer Yancey, the Engineer for the train assignment on December 26, 2010 and an employee of the Carrier for 17 years at the time of the incident.

The arguments and positions of the parties not essentially differing from those in Case No. 164, the Board finds no useful purpose to be served in repeating its Findings as set forth in disposition of Case No. 164, except to state what was said there has like application to the dispute in this case.

As in Case No. 164 involving the train's Conductor, the Claimant in this case, Mr. Yancey, has likewise admitted guilt to a failure to have performed his assigned duties in accordance with GCOR 6.32.2 concerning required protection for movement of his train over a crossing where he had been made aware that it was a public crossing with warning equipment that was disabled and inoperative.

A hand-written statement as submitted by the Claimant on the date of the incident, December 26, 2010, reads as follows:

On around 12:00 p.m. I was on train Q-STLLAC1-26A west headed to Springfield Yard. We were near Big Bend and Gier Avenue. I was blowing the horn for the traffic because no one would stop at the crossing while I was blowing, slowing down at the same time. When I got to the crossing the traffic finally stopped but I was still going through the crossing blowing my horn, then I realized we had to stop and protect the crossing before we went through the crossing. So I told the Conductor to call the Train Dispatcher so he would know what happened.

At the hearing when asked to describe what happened on the date at issue, the response of the Claimant was: "I failed to stop at 13.11 for a stop and protect at warning crossing notification, restriction C." Questioned as to whether he had complied with GCOR 6.32.2, the Claimant said: "No, I have, no, I didn't."

Although the Claimant would offer that he did not ignore the stop and protect order "intentionally," the fact remains that there was a serious failure to have operated his train in accordance with the prescribed provisions of GCOR 6.32.2.

As the Board stated in its Findings in Case No. 164, it must be recognized that the Carrier has a right and responsibility to enforce its rules and instructions for the operation of its trains in a manner to secure the highest degree of safety for its employees, the public, its property, and the property entrusted to it by its customers.


Based on the findings of record, as the Board held in disposition of the like claim of the Conductor in Case No. 164, no reason exists to conclude that discipline as assessed was harsh and unreasonable, as the Organization offers. Discipline as administered was rather lenient.

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