

PUBLIC LAW BOARD NO. 7293

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

STATEMENT OF CLAIM:

Appeal on behalf of St. Louis, Missouri Foreman John Mitchell, III and Helper Timothy Enneking for removal of a Standard Formal Reprimand and a Level S 30 Day Record Suspension and 3 Year Review Period, respectively, from their personal records and pay for all time lost as the result of an investigation held on August 17, 2011. (Organization File D-2126; Carrier File 55-13-0014 and 55-13-0015)

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 Claimants in a Carrier determination that testimony and exhibits presented at a hearing held on August 17, 2011 show that, as charged, they failed to properly protect a shove move through the Gratiot Lead while working as crew members on train assignment YSTL1132-17A in Lindenwood Yard, St. Louis, MO, on March 17, 2013. The lead locomotive and the leading truck of the second locomotive went over a derail, knocking it to the side of the track. There was, however, no derailment of the engines or cars being shoved. The Claimants were held to have violated several stated GCOR rules.

This appeal is made notwithstanding that Claimant Enneking freely admitted that he had control of the remote control movement of the engines in the shove move; he was not in a position to visually protect the shove; he failed to check that the switch points were properly lined for the intended shove movement; and he acknowledged that the shove went into the wrong track, or what is known as the "11 Pocket Track" as opposed to going into the job-briefed Gratiot Lead.

As concerns Claimant Mitchell, it is evident from both his pre-hearing written statement and testimony at the hearing that while he was counting down the cut he glanced up to see where the head engine of the shove was, saying, "it looked like the engine was going around a curve" so he called the Claimant on the radio and asked "are we going in 11 Pocket." Claimant Mitchell did not direct Claimant Enneking

to stop the shove; Claimant Enneking having recognized at that time the shove was going to the wrong track and making an emergency brake application of the remote controller which, in turn, caused the engine horn to blow a warning sound until the engines came to a stop.

The Board also finds it noteworthy that when Claimant Mitchell was asked by the conducting officer if he felt like he had complied with the GCOR rules, his response was: "Uh, I don't know, no." At the closing of the hearing Claimant Mitchell's representative in an effort to overcome this admission asked Claimant Mitchell what appears to be a somewhat overall question about work activities on the date at issue, that is: "Mr. Carter asked you, uh, if you were switching safely on March 17th that day. Were you switching safely?" Here the response of Claimant Mitchell was: "Yeah, uh, we were switching safely that day."


In overall study of the record the Board is satisfied there is ample testimony and evidence of record, including the aforementioned admission of guilt by Claimant Enneking, and the above referenced statement of Claimant Mitchell, that corroborates the fact that there was a failure on the part of both Claimants to have properly protected the shove move at issue.

The Organization has raised several procedural objections involving the conduct of the hearing. The Board has carefully reviewed these arguments and find them to be either unfounded or without sufficient merit to conclude that the Claimants were denied a due process hearing. The record clearly establishes that the Claimants had adequate notice of the charge against them; they had opportunity to prepare a defense against the charge, including several postponements of hearing dates; they were present for and ably assisted at the hearing by a representative of the Organization; and, opportunity was given to present and examine witnesses and a video presentation.

There being no valid basis for disturbing the Carrier's finding and its disciplinary action, the claim will 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: 9/26/17