

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Dilworth, MN Engineer K. E. Griffis, Sr. for removal of Level S, Thirty (30) Day Record Suspension and Three (3) Year Review Period and pay for all time lost as the result of the investigation held on November 16, 2011. (Organization File No. D1984; Carrier File No. 55-12-0015)

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 Claimant was assessed the discipline on appeal in a Carrier determination that testimony and exhibits presented at a November 16, 2011 hearing support a finding that the Claimant was guilty of negligence and an indifference to the safety of himself and others when he failed to perform a Class III Air Test on the train to which he was assigned as the Engineer after adding units at Dilworth, MN on October 9, 2011. The Carrier maintains that a Class III Air Test was required by Federal Regulations and BNSF Air Brake and Train Handling Rules.

The Carrier says that the incident came to the attention of its Road Foreman of Engines (RFE) when a random review of engine downloads revealed that the train on which the Claimant was a crew member had not made the required air test. In this respect, the RFE testified in part as follows in making reference to an exhibit placed into evidence at the hearing:

While looking at the download . . . it's easy to see there was no air test. You can see train and power activity and power is going back against the train and the air being cut into the train and no air test being done on the train before it departs. Looking at the download, the blue line indicates the brake pipe and there's no reduction of the brake pipe, uh, and the brake valve handle was never moved from release to applied before the train departed.

Questioned at to what kind of air test had to be performed on this train, the response of the RFE was: "A Class 3 Air Test, a set and release."

When the Claimant was asked if took any exception to the testimony of the RFE, the Claimant said:

I don't, no, I don't, I don't think there was anything untrue to what he showed me from the auto scan. I mean, you know, he showed it to me and that's what he said.

Claimant was subsequently asked if remembered doing an air test. The Claimant's response here was that he did not remember, and then said: "I mean that's a standard practice. You do them every time. So, you know."

Asked if he remembered having talked with his Conductor at all about an air test, the Claimant said: "I don't remember." On examination the Conductor said that he did not know if an air test was done.

The Claimant was asked if he had complied with Rule 100.15, also referred to as a Class III test, that states: "Test must be conducted when any change is made to a locomotive consist." Claimant's response was: "Evidence is showing that I didn't."

As concerns Organization argument, the Board is not persuaded that the Claimant was improperly denied alternative handling in view of, as the Carrier states, the seriousness of the violation. Further, in the light of testimony as presented by both the Claimant and the Conductor, the Board finds no basis of record to conclude that the utility trainperson assigned to the crew should have been called to testify at the hearing. Nor do we find it was necessary the RFE have shown that a calibration had been made to ensure that the device that recorded the absence of the air test was working in a proper manner.

The record showing sufficient support for it to be concluded that the Claimant was guilty as charged, the claim will be denied.

Award: Claim denied.



Melissa A. Beasley-Coke
Carrier Member



Robert E. Peterson
Chair & Neutral Member



J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: 1/9/17