

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

**Claim of Seattle, WA Engineer J. Zellerhoff 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 July
26, 2012. (Organization File No. D-2077; Carrier File No. 50-12-0005)**

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.

It is undisputed that while the Claimant was the Engineer on Train M-VAWEVE1 that his train passed an absolute signal displaying a stop indication without proper authority on the main line at CP Tukwila (MP 10.3X) on the Seattle Subdivision at approximately 0600 hours on July 6, 2012. The Claimant testified that he placed the train into an emergency braking application when he saw the red signal, but the train did not stop until two engine lengths past the signal. The Claimant immediately reported the incident to the Train Dispatcher.

Contentions of the Organization in defense of the Claimant that the train had received an improper signal at the Glacier Park control point in advance of the red block signal at Tukwila is not supported by facts of record. A notation placed on the train's signal awareness form by the train's Conductor records the Glacier Park signal as having been a solid approach signal.

The Board also finds no merit in Organization contentions that the Claimant had been "forced" into a Locomotive Engineer Training Program (LETP) class at Seattle, WA, some 279 miles from his hire-out location of Spokane, WA, and during the entire time in LETP had never traversed the main line track the subject of this dispute.

As the Carrier offers, nothing of record shows the Claimant was "forced" into an LETP class at Seattle, offering such action was in keeping with agreement rules to which the Organization is a party. The Carrier is also shown to have made the unrefuted statement that the Claimant made qualifying trips over the territory at

issue when in LETP; his work record showing that when in LETP and subsequent to becoming a licensed Engineer the Claimant operated trains northbound prior to the instance here in question on January 2, June 21 and 28, and July 2, 2012.

The Board also finds lacking in merit Organization contentions that the Claimant was put in an impossible situation beyond his control when he had only one mile to stop a merchandise train of unknown tonnage, on an unspecified grade, and with a curve and tree foliage blocking sight of the signal.

Contrary to Organization argument, it was testimony of the Carrier Trainmaster who interviewed the Claimant and the train's Conductor immediately following report of the incident that they told him they had gotten by the signal in becoming preoccupied with calling out a Form B that had not yet started; calling out other Form B's all night; working through Form A's; and, they basically lost situational awareness in getting through the signal. When both the Claimant and the train's Conductor were asked if they took any exception to this testimony of the Trainmaster, both responded in the negative. Further, as concerns the train being of unknown tonnage, the Claimant offered testimony that the train's tonnage was "about 2500 tons roughly" and "the length was 4000 something."

Even if, *arguendo*, support existed to give consideration to argument that the Claimant was not familiar with the track and signals on which he was operating, it would seem to the Board that such a situation would dictate more caution, not less in observing train speed and track signals.

In this same connection, the Board finds it significant that it was testimony of the train's Conductor that when he felt the train was not sufficiently slowing for the signal that he told the Claimant to "plug it," or to make an emergency application of the brakes, and that this emergency notification was given "less than five seconds" after observing the red block signal.

In giving consideration to this dispute the Board finds the following statement from the Carrier's letter of December 21, 2012 in denial of appeal of the claim to here be worthy of note:

In sum, while Claimant may be a relatively new engineer, said status does not excuse him from such a serious rule violation. After all, all engineers are new at some point in their careers and the overwhelming majority of them execute their duties flawlessly, not only during the early part of their careers, but for the entirety of their careers. To blame Claimant's neophyte status for his failure is simply not reasonable given the facts or based on the performance history of thousands of his peers.

The Carrier having shown sufficient support for its imposition of the discipline as assessed, the claim will be denied.

Award:

Claim denied.



Robert E. Peterson
Chair & Neutral Member



Melissa A. Beasley-Coke
Carrier Member



J. Michael LaPresta
Organization Member

Fort Worth, TX

Dated: 1/9/17