

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Tacoma, WA Engineer S. T. Anderson 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 June 5, 2012. (Organization File No. D2078; Carrier File No. 55-12-0006)

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 the position of the Carrier that testimony and exhibits brought forth during a June 5, 2012 hearing show that while the Claimant was working as a Yard Engineer, spotting a grain train in the Grain Yard at Seattle, WA on May 22, 2012, that he operated past a stop signal without proper authority. The Claimant's train reportedly went approximately fifteen (15) car lengths or about 653 feet beyond the signal before being directed to stop by the Dispatcher. This action on the part of the Claimant the Carrier says in violation of GCOR 9.5, "Where Stop Must Be Made."

In defense of the Claimant the Organization posits that the Carrier failed in its obligation of burden of proof. It contends that in order for the Carrier to have proved its charge against the Claimant the Carrier need have shown that the signal in question displayed a stop indication when the Claimant passed it, and that nothing brought forth at the investigation showed the presence of such stop indication. More to the point, the Organization says, is that nothing was brought forth showing that the signal in question was not displaying a restricting, flashing red, indication as offered in testimony at the hearing by the Claimant.

The Organization further maintains that even if, *arguendo*, the Carrier was found to have proven its charge that discipline of a Level S Thirty (30) Day Record Suspension and Three (3) Year Review Period is patently excessive for the alleged infraction.

In study of the record, the Board is not persuaded by the Claimant's assertions that he had reason to conclude that in observing the signal go off and then back on several times at the rate of about once every thirty (30) seconds or so that this signal aspect constituted restricted authority for him to proceed with the shoving of cars into the Grain Yard.

First, notwithstanding testimony of the Claimant that the signal was flashing or flickering on and off, in further testimony the Claimant said:

The signal kept going dark on us, and after about 10 minutes I started to pull. The signal was dark at that time. As I got to it, it went red again. I didn't know for sure why, so I just, I pulled and the next thing I know the Dispatcher was telling me to stop the train.


Second, even if the Claimant had found the signal to go on and back off several times from dark to red, it was the Claimant's responsibility to have treated the signal as a most restrictive stop signal and have notified the Dispatcher of such a matter; not to have proceeded to pass through it without the authority of the Dispatcher. In this respect, when asked at the hearing if he had "ever seen a restricting signal with that type of delay between flashes," the Claimant said: "No." Further, in response to a question on the Accident-Incident Interview Form as to what could have been done differently, the Claimant wrote: "Signal should have been treated as all red-most restrictive."


Third, it was the report of the Signal Technician who tested the signal shortly after the Claimant had run past it that he found the signal to properly working; the signal lit as intended; the signal stayed a constant lit when shaken; and no defects were noted in inspection of the wiring, lamp socket, etc.

It being evident that the Claimant was proven guilty of a serious offense, the Board finds no basis to conclude that discipline as assessed by the Carrier was harsh or unreasonable.

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