

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Seattle, WA Conductor S. A. Hite for removal of Level S, Thirty (30) Day Record Suspension and One (1) Year Review Period and pay for all time lost as the result of the investigation held on June 5, 2012. (Organization File No. D2097; Carrier File No. 50-13-0010)

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 dispute at issue arises from a Carrier decision that testimony and exhibits as brought forth at a formal hearing that was held on October 4, 2012 show the Claimant to have failed to properly ride on moving equipment at Stanley Yard, Seattle, WA, at approximately 2012 hours on August 25, 2012 while working as a crew member on K-AUBAUB4-25T. The Claimant was held to have violated TSR 13.1.5, "Riding In or On Moving Equipment."

It is the position of the Organization that TSR 13.1.5 does not cover the type of car that the Claimant was riding, much less how the Claimant was riding on the car. In this same respect, the Organization contends that the two Carrier supervisory officials who had been conducting an ops test of the Claimant and crew at the time they observed the Claimant riding on the car were not in agreement that the Claimant was riding the car in an improper way.

The Organization further contends that the Carrier was guilty of prejudgment in offering that an August 25, 2012 "Safety Alert" notice to employees on the Seattle Subdivision having described the incident the subject of charge to be that of the Conductor having been seen improperly riding an intermodal car; the Safety Alert being issued before the Claimant had the right to offer a defense against the charge at an October 4, 2012 hearing.

Lastly, the Organization says that even assuming, *arguendo*, the Claimant was found to be guilty as charged that discipline as assessed is harsh and unreasonable in view of the Claimant's work record.

In study of TSR 13.1.5 the Board finds support for the Carrier determination that the rule does in fact cover the type of car that the Claimant was riding, i.e. an intermodal car. As the Carrier submits, Paragraph C of TSR 13.1.5 states in part pertinent: "When any type of flat car is involved . . . Ride on the deck of an empty flat car, or on a TOFC/COFC flat car with an empty stanchion or table only if you can." It appears evident, therefore, that for the Claimant to have been observed sitting on the bed of the flat car with his back on the other container that he was in a position not in keeping with the dictates of TSR 13.1.5.

As concerns Organization argument that supervisory officials were in disagreement as to whether the Claimant was improperly riding the car, the Board finds the record to support the conclusion that there was no disagreement. Although upon completion of a "banner stop test" the Trainmaster signaled the Claimant to proceed with the move, it was not until the car on which the Claimant was riding came into closer view that both the Trainmaster and the Terminal Manager observed the Claimant sitting on the deck walkway of the head, double stack well car, with his back against a container. Upon making this observation of the Claimant, both supervisory officials directed the train to stop.

In regard to the question of prejudgment, the Board concurs with the Carrier that the Safety Alert did not prejudice the Claimant's right of due process. The Safety Alert did not identify the Claimant as the Conductor. Further, the Carrier being responsible for the safety of all of its employees it has a right to alert employees about its observation of an employee not performing their duties in a safe manner. The alert was nothing more than that of providing an educational awareness to employees not to commit a like violation of rules that could affect their own safety or the safety of others.

Contrary to Organization argument that the Claimant has a good prior work record, the Carrier submits that it contains five prior disciplines; three for operating rules violations and two for attendance related violations. Accordingly, the Board does not find discipline as here assessed to be 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