

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Tacoma, WA Yardman A. D. Moore 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 December 5, 2012. (Organization File No. D2106; Carrier File No. 50-13-0020)

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.

Following a December 5, 2012 hearing the Claimant was assessed the discipline here on appeal in a Carrier determination that testimony and exhibits brought forth at the investigation show the Claimant to have failed to protect a shoving movement of two light locomotives at about 0515 hours on August 5, 2012 in Tacoma, WA. A set of trucks for one of the engines went on the ground, with the derailment resulting in damage to switches and track. The Claimant was held to have violated GCOR 6.5, "Shoving Movements."

A hand-written statement of the Claimant that followed the incident at issue reads as follows:

At approx. 0515 Job #351 initiated a shove move Trk 16 at Tacoma. I was protecting the shove and instructed the Engr to back up. I mistakenly saw the lead switch to be lined for our movement. The power ran-thru the 16/17 lead switch. I lined the 17 switch and instr the Engr to move ahead. Not realizing we ran-thru the lead switch, putting one set of truck from BNSF 2340 on the ground.

At the hearing the Claimant offered that he "misread a switch . . . I mistook the 16/17 lead switch to be lined for our movement," and made the following statement when asked by his local representative if he was taking responsibility for the incident:

Yes, I am taking responsibility for this incident, but I'd like it to be known that I was protecting the shoving movement and just made a mistake lining a switch on a, the two switches for the 16 and the 17 tracks.

In defense of the Claimant the Organization says the handling of switches in a yard area where there are so-called inside/outside switches with switch stands close to one another, as in the case at issue, it can be very confusing, especially when the direction of movement is consistent with trailing point switches. The Organization thus urges it be recognized that at the time of the incident the Claimant had but one year of service, with four months of such time having been spent in training and that it was a lack of on-the-job experience on the part of the Claimant that resulted in his having "merely made a mistake" in handling the switching move at issue.

For the foregoing reasons the Organization says that discipline as administered by the Carrier is harsh and unwarranted.

The Board is not persuaded that just because the Claimant was a relatively new Conductor that the incident be viewed as an unfortunate happenstance. As stated above, the Claimant had gone through four months of Conductor training. It would therefore seem that having been instructed about the extreme responsibility and need to assure that all switches are properly lined when directing a shoving move that this is something that should have been upper-most in the Claimant's mind in his handling of the switching move at issue.

In the light of the above considerations and overall study of the record the Board finds the Carrier to have met a necessary burden of proof for discipline as assessed, i.e. a Thirty (30) Day Record Suspension (a no-time lost penalty) with a Three (3) Year Review Period. The claim will therefore 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