

**PUBLIC LAW BOARD NO. 7425**

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

**STATEMENT OF CLAIM:**

**Claim of Minot, ND Engineer D. D. Johnson 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 May 22, 2013. (Organization File No. D2128; Carrier File No. 50-13-0036)**

**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 following a May 23, 2013 investigative hearing in a Carrier determination that testimony and exhibits show that the Claimant was guilty, as charged, of negligence and indifference to duty when he failed to immediately report to the Train Dispatcher a ride quality incident and possible track defect near MP 180 of the Devils Lake Subdivision at 2000 hours on March 2, 2013 while working as a crew member on Train L-TW16251-02. This was a circumstance, the Carrier says, that could have affected the safe operation of the railroad and have exposed other employees of BNSF, Amtrak and the general public to potential harm.**

**It is undisputed the Carrier's first knowledge of this incident was at approximately 0530 hours on March 3, 2013 when it was reported to the Minot, ND Trainmaster in connection with an alleged injury that the Brakeman of the Claimant's crew then reported as having been sustained while he was working as a crew member of Train L-TW16251-02 on March 2, 2013.**

**A hand-written statement prepared by the Claimant at the meeting with the Trainmaster on the morning of March 3, 2013, reads as follows:**

**Was Engineer on LTWI 6251 going to Bisbee. Was going on Devils Lake Sub around MP 180 track was rough. Brakeman was seating in Brakeman's seat and bottomed out in seat causing back to become causing back pain. Reported when we returned to Minot.**

**A hand-written statement of March 3, 2013 as prepared by the Brakeman member of the Claimant's crew as placed into evidence at the hearing reads as follows:**

**While traveling east on Devils Lake Sub in BNSF 8127 we encountered a rough piece of track. I was sitting behind the Conductor in the jump seat. The seat cushion had caused me to bounce up slightly as the engine was dropping. I immediately heard the suspension bottom out. The engine then abruptly came back up as I was going downward. I felt the steel of the seat frame through the seat cushion and immediately felt like two vertebrae (sic) hit together in my mid back. Everyone in the crew made a comment as this was occurring. I immediately stated I felt an injury in my back. Approximately 1-2 minutes from the initial impact I felt slightly nauseous (sic). As the minutes progressed I could feel the pain slowly progressing and getting worse. The pain has leveled off but now my muscles around the area are beginning to tighten also in compensation to hold my posture. Continued my turn with additional help from the crew as not to aggravate the injury.**

**A March 4, 2013 type-written statement by the train's Conductor states in part here pertinent as follows:**

**At approximately 1940 between milepost 180 and 175 east of Granville, we encountered a rough spot in the track. The train was traveling between 45 and 50 MPH. After which, the brakeman, D. Walker stated his back was bothering him.**

**When the Claimant was asked at the hearing if he had immediately reported the track defect or the potential injury of the Brakeman to the Train Dispatcher as required by General Notice No. 25 and GCOR Rule 1.13, the response of the Claimant was: "We, um, felt there was no need for that."**

**Questioned further at the hearing as to why he felt there was no need to report the incidents contrary to the aforementioned notice and rule, the Claimant sought to distance himself from his prior hand-written statement in offering it was not a track defect, but the sub-standard ride quality of the train's locomotive engine that caused the alleged injury to the Brakeman. In this respect the Claimant said:**

**It was after that statement. I feel that statement isn't right, but um, was mistaken after further evaluation, but um, it wasn't the track. It was um, the locomotives or the question the statement at 21. I'm no qualified Track Inspector. I'm no Weather Geologist. I'm no qualified Machinist, but at 21 degrees I'm going to suggest that the frost heaves aren't available.**

There is no question as the Carrier submits that whether it was rough track or a crew member sustaining an alleged personal injury, especially where, as concerns the latter and the Brakeman having stated it was necessary the other crew members help him with the continued performance of his duties, that such incident required a prompt reporting of such matter.

An employee of the Carrier since April 11, 2005, the Claimant's record shows him to have been assessed discipline on two occasions prior to the incident the subject of this dispute. On March 28, 2008 the Claimant was given a Thirty (30) Day Record Suspension and One Year Review Period concerning the late reporting of an alleged personal injury that he stated had occurred on February 20, 2008 and was not reported until February 24, 2008. In view of the nature of this particular past offense for which the Claimant was disciplined it is evident that the Claimant knew or should have known the importance of making timely notification of not only an alleged injury, but of track conditions which he had believed to be defective.


The second recorded discipline on the Claimant's record was administered on November 16, 2012. In waiver of a hearing the Claimant was assessed another Thirty (30) Day Record Suspension with a One Year Review Period in a charge of failure to comply with a stop and proceed signal. It therefore appears to the Board that given the fact that the current incident of March 2, 2013 occurred within the aforementioned One Year Review period it may not be said that a Thirty (30) Day Record Suspension and Three (3) Year Review Period was harsh or excessive.

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