

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

**Claim of Auburn, WA Engineer R. J. Kersten 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 6, 2013. (Organization File No. D2132; Carrier File No. 50-13-0031)**

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 charged with a failure to secure a proper Track Warrant to proceed into the Stampede Subdivision while working as the Engineer on Train U-FTEPPO-70T on May 14, 2013 and using Track Warrant No. 431-79 as addressed to BNSF 4566 East, an identity other than that of the lead locomotive for the Claimant's train. The identity number for the lead locomotive the Claimant's train was BNSF 6279. The incorrect locomotive identification on the Track Warrant only came to be recognized when the Claimant and the train's Conductor contacted the Train Dispatcher for further main line track authority upon exceeding the limits of the Track Warrant at Kanaskat, WA, some twenty (20) miles and about seven (7) minutes after departing Auburn, WA.**

**Following a June 6, 2013 hearing the Claimant was held by the Carrier to have violated GCOR 14.1, "Authority to Enter TWC Limits," and thereby assessed the discipline here on appeal.**

**GCOR 14.1 reads as follows:**

**Where designated by the timetable, a track warrant will authorize main track use under the direction of the train dispatcher or as prescribed by Rule 6.13 (Yard Limits) or Rule 6.14 (Restricted Limits). Track warrant instructions must be followed where yard limits or restricted limits are in effect.**

The Organization submits that on the day in question the Claimant came to work fifteen (15) minutes early at Auburn, WA for his on duty assignment of 2000 hours and that both the Claimant and Conductor were immediately pressured by the Yardmaster to get their paperwork and “get out of town” because their train was sitting on a street crossing in downtown Auburn; the crew and train departing the terminal less than thirty (30) minutes on duty. Further, the Organization says the Claimant was “given a false track warrant because the Dispatcher put the wrong engine number on it.” In this respect, the Organization submits, as brought forth at the investigation, the Carrier Trainmaster witness agreed that the Dispatcher should have known that BNSF 4566 (the locomotive number on the Track Warrant given to the Claimant) was approximately 200 miles away in Longview, WA, as would have been shown as such on the dispatching screen.

The Carrier says for the Organization to argue that the Claimant and Conductor were “forced” or “pressured” to the point that they were expected to not work safely is “so far out of bounds that it defies logic.” It says the contention that the Claimant and Conductor were victims of undue pressure to get their train out of Auburn “flies in the face of Claimant’s responsibility as an employee of BNSF relative to our number one priority of working safely.”

It is also the position of the Organization that while it understands the Claimant and Conductor had a certain amount of responsibility in making sure they had the right track warrant that the Dispatcher and Yardmaster were not called as witnesses at the hearing for examination concerning their role in the incident

Contrary to Organization contentions the Board does not find the record to support argument that the investigative hearing was prejudiced and unfair. Both the Claimant and his representative were provided the opportunity to fully question the Carrier’s witness, a Trainmaster who investigated the incident, and to present into evidence statements and exhibits in a defense against the charge. That the hearing officer declined an Organization request to summon the Yardmaster and the Train Dispatcher who were on duty the date of the incident to review their respective roles in the incident is not found to have deprived the Claimant of due process. About the only thing those two individuals could contribute to the charge of record would be a confirmation that the Track Warrant as placed into evidence contained an incorrect locomotive identification number.

The Board finds it worthy of note that in a closing statement at the hearing that the Claimant offered the following reflective comments involving this incident:

Well, first off I do take responsibility for the error that happened with our track warrant, and, although I do feel the pressure was a contributing factor, I still, um, I still am responsible. You know, this is just showing me, it’s a hard way to learn, but, you know, from now

on I'm not going to let anybody else rush me. I'm going to make sure I've got all the information I need, make sure I'm safe. Don't want to get hurt or anybody hurt out here. And, you know, this is something that I can definitely, you know, share with other crew members, you know, just to make sure that they don't do the same thing and they don't have to go through this whole entire process. So, it was unfortunate that it happened, but I've learned from it, and I know I'll never, ever make this same mistake again.


Although sufficient cause is found for the administration of discipline in the failure of the Claimant to have diligently assured that the Track Warrant correctly identified the lead locomotive of his train before he commenced the operation of his train, the Board finds the circumstances of record as developed at the hearing not to warrant the severity of the penalty as imposed by the Carrier. We find, and will so direct that discipline be modified to that of a Standard Formal Reprimand.

Award:

Claim sustained to the extent set by the above Findings.



Robert E. Peterson  
Chair & Neutral Member



Melissa A. Beasley-Coke  
Carrier Member



J. Michael LaPresta  
Organization Member

Fort Worth, TX

Dated: 1/9/17