

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Pacific (5th) Seniority District (Tacoma) Conductor B. Underdown 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 August 29, 2013. (Organization File No. D324-038-14E; Carrier File No. 50-14-0003)

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 claim appeals discipline assessed the Claimant in a charge of alleged responsibility as a crew member involving the train to which the Claimant was assigned as the Conductor having passed a signal displaying a stop indication without the proper authority at Mile Post 0.0 (21st Street) on the Seattle Subdivision on July 9, 2013.

It is the position of the Carrier that as a crew member the Claimant was jointly responsible for the safe operation of the train, and it being undisputed from testimony and exhibits as brought forth at the investigation into the incident that the Claimant's train ran by the stop signal by approximately three engine lengths, that discipline as administered to the Claimant is completely appropriate.

According to the record as presented, at the time of the incident a Student Engineer was at the controls of the locomotive engine consist, with the train then running on a Diverging Approach signal. That is, a track occupancy signal which notifies a train crew that the next governing signal for their train could display a stop indication. The train's Engineer, who was responsible for on-board instruction of the Student Engineer, was reportedly checking his rule book for track speed.

The record also reveals that the Claimant had called out the Diverging Approach signal and that the Student Engineer had responded to such call. It is also noted from the record that it was the undisputed testimony that when the Claimant realized that the Student Engineer was experiencing some difficulty in determining

the indication being displayed on the approaching signal, and was not going to stop the train short of the stop signal, that the Claimant placed the train into an emergency application of the brakes.


In the opinion of the Board, the record supports the conclusion that the Claimant was alert and attentive to his operating responsibilities at the time of the incident and not, therefore, jointly responsible for the failure of the train to have stopped short of the stop signal.


There is no question, as the Carrier offers, that the running of a signal displaying a stop indication is one of the most serious violations that can occur. However, in the light of the above considerations and particular circumstances of record in this case the Board finds the assessment of discipline to the Claimant not to be warranted. Accordingly, the Board will direct that the claim be sustained.

Award:

Claim Sustained.


Robert E. Peterson
Chair & Neutral Member


Melissa A. Beasley-Coke
Carrier Member


J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: 4/18/17