

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

**Claim of Minnesota (2<sup>nd</sup>) Seniority District (Dilworth) Conductor T. R. Anderson for reinstatement to service with full seniority and vacation rights unimpaired, paid for all time lost beginning July 31, 2013, until reinstated to the service of the Carrier, without deduction of any interim outside earnings, paid for attending the investigation held July 17, 2013, that any loss of fringe benefits be restored to him, and that any mention of this failure to perform required air brake test be removed from his personal record file. (Organization File No. D-2140; Carrier File No. 50-13-0037)**

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 present for and provided opportunity to participate in the Board's hearing,**

**On May 10, 2013 the Claimant went on duty for a train assignment as a Conductor at Dilworth, MN. Together with the Engineer for his assignment, Engineer Bonderson, the Claimant was transported by van to Casselton, ND, to assemble, air test, and operate a grain train from Casselton to Dilworth. It is undisputed that the Claimant neglected to pick up and bring with him to Casselton an end of train device (ETD), a device commonly referred to as a "FRED" or "FREDDY." Positioned on the end of the rear car of a train and coupled to an air hose, the EDT provides for a reading of the amount of air flow that is present for applying and releasing the brakes on a train. The Claimant had also admittedly forgotten to bring a portable hand-held air gauge. Following a discussion with Engineer Bonderson about the absence of both air testing devices, it was admittedly decided to place a flag at the rear of the train. The Claimant and Engineer Bonderson then proceeded with their train to Dilworth.**

**It is the position of the Carrier that an Initial Terminal Class 1 Air Brake Test was mandatory to inspect the air brake and safety appliances and to test brake pipe integrity when the Claimant and Engineer Bonderson assembled cars for their grain train at Casselton. Further, the Carrier submits that the air test for the train could**

not have been completed unless it was confirmed by means of an EDT or a hand-held air gauge at the rear of the train to show that there was required air pressure throughout the train.

The incident is shown to have come to the attention of Carrier supervisory officials when the Dilworth Yardmaster told on-duty Trainmaster Richardson that the Claimant's train came into the yard without an ETD and that the Claimant had said that the crew next tasked with handling the train "would need a FRED." Trainmaster Richardson testified to his then having had the Claimant and Engineer Bonderson come to his office to discuss this situation. Trainmaster Richardson said that Engineer Bonderson told him that they used an air gauge to get air tests within the Air Brake and Handling rules. As concerns the Claimant, Trainmaster Richardson said the Claimant was "right in the doorway and didn't confirm or deny the statement of Engineer Bonderson." Trainmaster Richardson said that he asked both the Claimant and Engineer Bonderson to provide written statements, and that after both individuals went into an adjacent room to prepare their statements and that it was about 15 minutes later when each provided somewhat like brief statements in affirming that an air test had been performed on their train.

The Carrier also submits, as presented into evidence, data from the download of event recorder from the Claimant's train which confirms that a proper air brake test had not been performed. In this regard, the Carrier directs attention to testimony of Road Foreman of Engines (RFE) Douglas that after reviewing this data he phoned and spoke separately with the Claimant and Engineer Bonderson about his findings in study of the download data. RFE Douglas said that when he asked the Claimant if an air gauge was used that the Claimant's response was: "There was no air gauge involved." RFE Douglas said that in his phone call with Engineer Bonderson, after telling him about his findings from the download data, that he then said to Engineer Bonderson, "it sure appears there was no air gauge." The response of Engineer Bonderson to this comment according to RFE Douglas was: "No, the Conductor had a, a portable hand-held gauge." RFE Douglas said that in several subsequent discussions with Engineer Bonderson that the latter continued to insist that an air gauge had been used to test the air, and it was not until the fourth time Engineer Bonderson was confronted that he admitted to there not having been an air gauge test.

At the investigation the Claimant offered the following statement concerning his not having picked up an ETD at Dilworth to take to Casselton: "It had completely blew my mind to grab FRED." As concerns the Claimant not having the hand-held air gauge, he said during his discussion with Engineer Bonderson that he told the latter that he did not have an air gauge or EDT: "I said that I, I had one, but it was in my locker, because I had the utility job the night before and I put it in my backpack and I spaced and didn't bring one."

**In further testimony concerning the preparation of the train for the trip to Dilworth, the Claimant said:**

**[We] job briefed, and then I said we didn't have a, a FREDDY, and I didn't have an air gauge. Um, and I, uh, was quite upset with myself for forgetting the, the FRED, um that it never repli – or never occurred to me to DP it. I wasn't, uh, I was quite upset with myself at the time. Um, I walked back. I made, uh, Aaron [the train's Engineer] set the air just so I, the last time I got there, or took a train out of there, there was a crossing cut, so I kind of assumed that the same crossing was cut. So I started coming to the head and I had him set them up just to make sure that when I did go back there that I knew that all the pistons were out, that there was an angle cock to close, and so when I got back to the joint, uh, I told him to release some of those joints we made and I'd be in the joint. I got in between, hooked up the air hoses. Um, he built them up, or stretched them and then built them up and, uh, told me to proceed walking them, or that they were set. So I walked the set, and I got to the rear end, and I walked the release to make sure that they were on the other side, to make sure that they were, that the set and release was okay to go. And, uh, from then on I was going back to Dilworth.**

**\* \* \* \* \***

**Uh, I know now, uh, to, uh, always bring a gauge. But at the time, I, uh, I thought, in my head, myself, I thought that we were okay for a yard transfer, which I know right now that you need 60 pounds, you need an air gauge. So, uh, at the point in time, uh thought we were a yard transfer and I, uh, myself, I thought that I, I was okay just walking beside the (inaudible), making sure angle cocks were open, make sure the rear of the train was, had air to it.**

**When questioned at the investigation if he had performed a proper air test at Casselton on the date in question, the response of the Claimant was: "No, sir, I didn't." Questioned as to whether he had reported to anyone at Dilworth that he had failed to conduct an air test on the train, a train that was being turned over to another crew, the Claimant said that he had not done so.**

**It is the position of the Organization that the Claimant was completely truthful at the investigation and showed a tremendous amount of remorse for his actions as relates to the rule violations that had occurred on the date at issue, May 10, 2013. In this respect, the Organization cites the response of Road Foreman of Engines Douglas when the conducting officer asked: "So from the first, in the first**

conversation, Mr. Anderson admitted that a proper air test was not done?" The reply of Road Foreman of Engines Douglas was: "Yeah, that's correct."

The Organization contends that whereas the Claimant was forthright and truthful at the investigation that Engineer Bonderson was less so, the latter it says continuing to allege that he thought they had a hand-held gauge to check the air on the train. The Organization thus says it is troubling that the same level of discipline was assessed to each crew member, even though there was a clear difference in the level of cooperation as it relates to the Claimant "coming clean" and being truthful with local managers when contacted out of ear-shot of Engineer Bonderson.

The Organization also asserts that given the fact that up until the date of the incident the subject of this dispute that the Claimant, an employee since February 21, 2011, was "an exemplary" employee that the severity of the penalty of dismissal from service is harsh and unreasonable.


There is no question that the Claimant was guilty of a dereliction of duty in a failure to conduct a proper air test and in a failure to initially provide factual information to supervisory officials. The Claimant's actions cannot be minimized in contentions of allegedly being concerned about personal problems that Engineer Bonderson had expressed about a need to quickly get back to Dilworth. The Claimant should have contacted the Dispatcher for advice on how to handle the situation.

Although stern discipline is warranted, the Board finds it should be short of the ultimate penalty of a dismissal from service. We believe that the time the Claimant has been out of service should be sufficient to have him fully recognized that he has to perform all of his assigned duties in a safe and efficient manner. The Board will accordingly direct that the Claimant be reinstated to service with seniority and other benefits unimpaired, without pay for all time lost. This return to service shall be subject to imposition of a 12-month probationary or review period commencing with the date of the Claimant's return to service upon his successfully passing usual and customary return to service examinations.

Award: Claim disposed of as set forth in the above Findings.

  
Robert E. Peterson  
Chair & Neutral Member

  
Melissa A. Beasley-Coke  
Carrier Member

  
J. Michael LaPresta  
Organization Member

Fort Worth, TX  
Dated: 4/18/17