

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Pacific Fifth Seniority District (Spokane, WA) Conductor A. A. Washburn for reinstatement to service with seniority rights unimpaired, removal of censure from his personal record and pay for all time lost including but not limited to the following: payment of vacation allowance, health and welfare costs, reimbursement of all expenses related to the pursuit of alternative employment, reimbursement for any damages incurred as the result of discharge from service including proceeds on any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on October 7, 2015. (Organization File No. D426-463-15A; Carrier File No. 50-16-0006D)

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.

Study of the record shows that on August 17, 2015 while working as the Conductor on a train operating Spokane/Hauser to Pasco, WA, that the Claimant and his Engineer failed to comply with the requirements of a "diverging approach" signal at MP 113.12, a signal which required train speed be reduced to 30 mph, prepared to come to a complete stop prior to proceeding past the next signal. A download of the engine event recorder showed that instead of reducing speed at the diverging approach signal that train speed increased from 40 mph to 49 mph, and that there was no reduction of speed to 30 mph until it was too late to stop in advance of the "stop and proceed" signal at MP 114.70; the Engineer inducing an emergency brake application (EIE). The train did not come to a stop until it was 794 feet past the stop and proceed signal. Although safety and operating rules required an immediate emergency warning by radio to alert other trains operating in the area and the Dispatcher of the train's emergency stoppage as a result of passing a red stop signal, the Claimant only stated that his train had "lost" its air. After the train recovered its air, the Claimant and his Engineer completed the trip to Pasco without further incident.

The extent of the aforementioned safety and operating rule violations only came to light when Road Foreman of Engines (RFE) Tait proceeded to investigate an August 18, 2015 e-mail from the train's Engineer that the train had experienced an "unusual condition" that required an EIE brake application on August 17, 2015. RFE Tait's review of the train's engine event recorder and radio communication tapes from the Claimant's trip on August 17, 2015 uncovered the full extent of the EIE incident.

As a result of RFE Tait's findings the Claimant and his Engineer were notified to report for a hearing. Following an October 7, 2015 hearing the Carrier advised the Claimant by letter that testimony and exhibits brought forth at the hearing show that he was guilty as charged and thereby dismissed from service effective that same date.

As concerns the Claimant's responsibility in the incident, the Carrier submits, as stated above, that he did not properly report that his train had been placed into an EIE as a result of having improperly passed a signal displaying a stop indication as a result of the train exceeding maximum authorized speed, the Claimant only having said that his train had lost its air. Further, the Carrier submits that in addition to a failure to have assured compliance of train speed in accordance with authorized speed that the Claimant also falsified information he placed on his Signal Awareness form, listing his train speed to have been 12 mph when it entered an "Approach" signal. It is, therefore, the position of the Carrier that the record clearly supports its findings that the Claimant was in violation of GCOR 6.31, Maximum Authorized Speed, OSAI 9.1.14, Stop and Proceed, and GCOR 1.6, Conduct.

The Carrier further says that due to the seriousness of the multiple safety and operating rule violations committed by the Claimant in the same tour of duty that it has properly determined it appropriate that the Claimant be dismissed from service in keeping with its PEPA discipline policy.

In a prehearing written statement the Claimant stated the following:

On duty on loaded coal train to Pasco. Left Connell on clear. Had advance approach to East Cactus. Diverging approach at East Cactus. Called out block, Engineer replied. Filled out signal awareness form and checked train sitting on MT 2. Looked at speedometer and realized we were still over 40 miles per hour. Told Engineer we are on an approach. Came around corner and block was red. Engineer put train in emergency. I called out over radio. Train stopped past block. Air recovered. Told Dispatcher we were in emergency but air recovered. He told us to proceed west.

Review of the recorded radio communications involving actions of the Claimant show that after his train was put into an EIE that he said: "Emergency, emergency, BNSF 9030 in emergency, main one (inaudible) milepost 115. Over." The Claimant is not shown to have said that his train ran past a red stop signal; saying the train had lost its air only after another train crew questioned over the radio as to whether the train had lost its air; the Claimant then just saying, "Yeah." It is also noted that the Claimant made radio contact with the Dispatcher after the crew of the other train told the Claimant to make sure he phoned up the Dispatcher. In this respect, the Dispatcher then said: "BNSF Pasco Dispatcher. Over." The Claimant is next shown to have said: "Yeah. Dispatcher, BNSF 9030 west, uh, went into emergency here at milepost 115, uh. Air recovered, uh. We're creeping on up, uh, everything seems to be fine. Over."

The train's Engineer said the following in his prehearing statement:

I, Robert Coles, was the Engineer on a coal train heading west to Pasco. We passed the advanced block to East Cactus and the signal was an advanced approach. I then passed the speed board and set my counter. I dozed off and the next thing I recall is my counter alerting me that I was clear of the 45 mile an hour speed zone. I released my air and got into the throttle. My Conductor then informed me we were on a diverging approach. I looked up, I saw a red block, and I dumped the air. I believe I saw the block turn to an approach as we passed the signal. We were stopped several car lengths past the signal. We called out emergency and informed the Dispatcher and he told us once the air was recovered and we were able to, proceed signal indication. Upon tie up I proceeded to the hotel to rest. I took my call to go back to work and faxed in the Engineer's report of undesired emergency.

It is noteworthy that Engineer Cole not only said that he "dozed off," after setting his counter, but it was his counter that alerted him to be clear of the 45 mph speed zone. Nothing is offered about the Claimant having taken any notice or exception to Engineer Cole dozing off or the Claimant commenting upon the speed of the train after passing the diverging approach signal; the statement indicating that it could be read as the Claimant only having told Engineer Cole that the train was on a diverging approach when the train was at or close to the red stop signal.

The Organization has vigorously argued that mitigating circumstances exist in this case that warrant the Claimant's reinstatement to service. The Organization questions the aspect of the signal, urging that as Engineer Cole stated in his prehearing statement that he saw it change to an approach as the train passed the signal; the Claimant offering that Engineer had informed him that the signal aspect had changed from red to yellow approximately 25 to 40 feet prior to the locomotive


cab passing the signal. The Organization also submits that the signal was located above the cab on the Engineer's side of the engine, offering that the Claimant did not observe the aspect change. As concerns notations made on his Signal Awareness form, it is urged that due to the train being in emergency application and the Claimant attending to his radio communications duties, a period of time elapsed after the cab passed the signal and the time the Claimant marked down the speed at which it had been passed, doing his best to estimate the speed as he was not looking at the speedometer. Lastly, the Claimant did not believe a violation had occurred due to Engineer Coles' observation that the signal had changed and displayed yellow aspect shortly before it was passed.

The Board not being persuaded by Claimant and Organization argument; the evidence of record supporting the Claimant's culpability in the passing of the stop signal without proper authority constituting a major offense; and, the Claimant's dishonest reporting of the EIE incident being detrimental to the spirit of mutual respect and trust which is necessary in the employee/employer relationship for the safe and efficient operation of the railroad, the Board finds no reason to disturb discipline of dismissal from service as assessed by the Carrier. 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: 9/25/17