

**PUBLIC LAW BOARD NO. 7425**

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

**STATEMENT OF CLAIM:**

**Claim of Springfield, Missouri Engineer Jeffrey A. Whitlinger 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 July 28 and August 26, 2015. (Organization File No. D303-370-15B; Carrier File No. 55-16-0002)**

**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.**

**On June 25, 2015 the Claimant was the Engineer on a train operating from his away-from-home terminal of Little Rock, Arkansas over the Hoxie Sub-Division of the Union Pacific Railroad (UP) through a Carrier/UP trackage agreement. A Form B track restriction was in effect for operation of the Claimant's train from Mile Post (MP) 262.75 and 261.5 to protect a UP Maintenance of Way (MofW) crew that was performing overhead work on a bridge. The Claimant's train passed the Form B restriction and a red flag without permission from the Foreman in charge by 1310 feet, with locomotive downloads showing that the lead engine went by the flag at 23 mph.**

**Following three postponements of scheduled dates, an investigative hearing commenced on July 28, 2015, recessed, and resumed and was completed on August 26, 2015.**

**At the hearing the Claimant admitted responsibility for his train's failure to have stopped short of the Form B restriction.**

By letter of September 8, 2015 the Carrier notified the Claimant that it had determined through testimony and exhibits brought forth during the hearing that he was guilty as charged and was therefore dismissed from service effective that same date for violation of GCOR 1.3, Rules, GCOR 5.4.7, Display of Red Flag or Red Light, GCOR 1.14, Employee Jurisdiction, GCOR 1.1.2, Alert and Attentive, and GCOR 1.47, Duties of Crew Members. The letter further stated that in assessing discipline consideration was given to the Claimant's discipline record and the discipline assessed was in accordance with the Carrier's Policy for Employee Performance and Accountability (PEPA).

Before moving to the merits of the dispute, the Board will first note that it has given careful study to Organization contentions that the Claimant was denied benefit of a fair and impartial hearing and has found such argument not to be of sufficient substance to conclude that the claim be sustained.

As concerns the Claimant having admitted responsibility for the incident, the Board finds it noteworthy that the Claimant made a forthright statement in connection with such responsibility and personal regret that he has felt and has been harboring about the incident. In a rather extensive closing statement at the hearing the Claimant said in part:

On June 25<sup>th</sup> at 1:45 when we went on duty, this wasn't my intention for none of this to happen. I've got two years to retirement. I thought I was doing the right thing coming down here and helping out. And, apparently, I dropped the ball. I owned the deal from the time it happened. I never blamed [Conductor] Darien. I haven't blamed anybody or anybody except myself. . . . I've given the Springfield Division 19 hard years. I've never been, had availability letter issue, never been reprimanded, talked to. I usually don't even use all of my vacation days or my PL days. I work one of the hardest territories on the BNSF system. I run heavy coal trains, rain, snow, fog you can't see five feet in front of you. I've never had an incident in my life that's anywhere close to this. It's been hard to swallow, but I will accept what, uh, whatever needs to come down the pipes. . . . I got by the red flag . . . a lot of things going on and we got caught up in it. And, uh, I didn't realize that the yellow/red [flag] was next to the red [flag]. I knew that we were getting close to the limits and I was slowing the train down to, to do what we needed to do. And, uh, he came up on us quicker than expected, assumed, or thought. It, uh, I've a lot of time to think about it too and something that I know that maybe is not here or there, but I cannot understand for the life of me why something so important as a Form B that protects men, the most important rule that our job entails men and equipment, there can't be some kind of a notice on a GTB [General Track Bulletin] that says

short flag located. . . . I just wish that something has come out of this positive that somehow other railroads or FRA [Federal Railway Administration] or whoever mandate that they have, when there's a short flag located like this, it needs to be in black and white. It needs to be on the GTB. Put stars around that too. . . . And that, that's one thing that I have thought of all this. If there's any positive outcome out of this, I hope something like that can be done. And, that's all I have to say.

As concerns the mitigating circumstances offered by the Claimant and advanced in extensive Organization argument on the property and to this Board about the location of the flags. As the Carrier states, there is no indication that the flags were improperly displayed and that the flags are secondary measures to protect crews working on tracks; the primary safety measure being the GTB that the Claimant and his Conductor received at the beginning of their tour of duty.

We concur with the Carrier that in passing the Form B and red flag restriction that the MofW crew was placed in danger, if not the Claimant and his Conductor. That no personal injury or mishap occurred is, of course, fortunate. Further, that the MofW crew was working on an overhead bridge does not overcome the possibility a worker having had to go onto the track to retrieve something dropped from the bridge or equipment having been left on the track.

In regard to Organization contentions of the Claimant and Conductor not being able to get in touch with the Foreman in charge of the Form B work area due to "radio clutter." As the Carrier says, radio traffic has no bearing on the Claimant's or the Conductor's responsibility to have stopped at the Form B designated MP. Clearly, if the Claimant or the Conductor was unable to communicate with the Foreman to receive permission to enter the Form B restricted track then they had a responsibility to bring the train to a stop and await the opportunity to be in communication with the Foreman.

As concerns further Organization argument that the Claimant made a controlled stop and "stopped the train in good fashion, good train handling, without causing any derailment." We also concur with the Carrier that train handling after the emergency stop is immaterial as the discipline assessed was for the Claimant's train passing the Form B and red flag without permission by 1310 feet before stopping.

Lastly, as concerns the above closing statement of the Claimant concerning his record over many years of service with the Carrier. The Claimant's record shows that he was hired as a Brakeman on October 14, 1996 and was subsequently promoted to Conductor and Engineer. The Claimant is shown to have worked at or out of Springfield, MO until March 2006, when his work location changed to Memphis, TN; returning to Springfield in July 2015. As concerns working in a safe

manner, the Claimant's record shows only one non-reportable injury in August 2009, with no time lost. However, as concerns the Claimant stating that he has never been reprimanded, his record shows that in waiver of a disciplinary hearing the Claimant accepted a one-month "conditional suspension" on December 11, 2014 for a first time violation of GCOR 1.5.


In overall study of the record the Board concurs with the Carrier that the Claimant was guilty of a serious violation of rules for which he is deserving of stern discipline. However, we believe discipline should be short of a dismissal from service. In the particular circumstances or record, we find more appropriate discipline to be a suspension from service in the amount of time served to implementation of the Board's Award, without pay for time lost. The Board will therefore direct that the Claimant be so returned to service with seniority and benefits unimpaired, subject to successfully passing all regularly required 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: March 1, 2018