

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

**Claim of Memphis, TN Yard Helper William Clark for removal of Level S, Thirty (30) Day Record Suspension and Three (3) Year Review Period from his record and pay for all time lost as the result of an investigation held on March 17, 2015. (Organization File No. D1420-477-15A; Carrier File No. 55-16-0038)**

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 December 31, 2014 while working as a Yard Helper on a Remote Control Operation (RCO) yard assignment in the Memphis Yard, the Claimant was instructed by the Yardmaster to shove a car into Track 58. While moving the car towards Track 58 it collided with a standing cut of three cars on the lead to Track 60, derailing one of those cars.

The Claimant was thereafter notified by letter of January 9, 2015 that an investigation into the incident was scheduled for January 16, 2015 for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with an alleged failure to protect the point of cars being shoved ahead of engines, resulting in the derailment of one car.

Following eight postponements, the investigation was conducted on March 17, 2015. The Claimant was present for the investigation and assisted in a defense against the charge of record by a representative of the Organization.

By letter of March 26, 2015 the Carrier notified the Claimant that it had determined through testimony and exhibits brought forth during the investigation that he was guilty as charged and was assessed the discipline here on appeal.

The Carrier maintains, as the record shows, that with the Claimant having admitted at the investigation to not being in a position to protect the RCO shoving move that

there is no need for further proof of guilt to the charge and the only remaining question is the degree of discipline, as has been held in numerous past awards.

The Organization does not dispute the Claimant's admission that he was not in position to visually protect the shoving movement, but maintains that the claim be sustained due to what it contends was a failure on the part of the Carrier to have afforded the Claimant benefit of a fair and impartial investigation.


Although there is merit to some Organization procedural argument that did not serve the discipline process in a proper manner, we do not find them to be of such an egregious nature to hold that discipline should be set aside and the claim sustained. We find no justification that the procedural errors were made in either bad faith or in a deliberate attempt to deny the Claimant due process in the conduct of the investigation or in the handling of the claim on appeal. As has been held in a long number of awards in this industry, the conduct of an investigation in a disciplinary proceeding does not require an adherence to all the attributes of a trial or criminal proceeding as in the courts of law, albeit the record must show that a carrier acted upon evidence that warranted application of the discipline imposed.


Moreover, as the Carrier submits, it is evident that numerous awards have held that when there is an admission of guilt in the disciplinary process that this obviates the need for further proof in the conduct of an investigation.


Turning to a consideration of discipline, we do not find the quantum of the penalty as assessed to be harsh or unreasonable. Testimony of record, including the Claimant's own admission, supports the conclusion that due to a failure to have been properly positioned to protect a shoving move that the Claimant was responsible for the derailment of a car. 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: March 27, 2018