

PUBLIC LAW BOARD NO. 7425

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

STATEMENT OF CLAIM:

Claim of Memphis, TN Yard Foreman H. L. Johnson 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 a result of an investigation held on March 18, 2015. (Organization File No. D1420-469-15A; Carrier File No. 55-16-0054D)

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 March 8, 2015 a shoving movement of 25 cars under the control of the Claimant as Foreman on a remote control operation (RCO) yard assignment in the Memphis Yard failed to stop in advance of a switch not lined for his movement, resulting in eight cars going through the switch before coming to a stop; damaging the switch and delaying train operations.

Following a March 18, 2015 hearing the Carrier determined that testimony and exhibits showed the Claimant to have failed to protect the point of the shove so as to have been prepared to stop short of the switch that was not lined for his movement. The Carrier then notified the Claimant by letter of March 27, 2015 that he was assessed the discipline here on appeal for violation of GCOR Rules 1.1.2, "Alert and Attentive," 1.6, "Conduct," 6.5.1, "Remote Control Movements," 6.28, "Movement on Other than Main Track," and 8.2, "Position of Switches."

The Claimant admitted at the time of the incident and at the hearing to his having run through the switch. The Claimant offered that he had positioned himself on the leading end of the 25 rail cars being shoved and had attempted to stop the movement as he approached the switch which was not lined for his movement. The Claimant said he tried to contact the Pro Yard Operator for assistance in reducing speed through the latter's application of the master retarder, albeit without success.

There is no question that the facts of record support a finding that the Claimant was admittedly responsible for running through a switch that was not lined for his


intended movement. It is apparent that the Claimant was directing the movement at a rate of speed that prevented him from stopping in half the range of vision short of the switch. That the Claimant was not operating with due regard for the conditions of limited visibility is also evidenced by the Claimant's admission that he attempted to contact the Pro Yard Operator to, as the Claimant said, "to give me the squeeze to the master [track retarder controls] to slow me down, just stop me or whatever."

As concerns Organization argument that the Claimant was deprived of his due process rights in a failure by the Carrier to provide documents it intended to introduce at the hearing to the individual identified as the Claimant's representative 48 hours in advance of the hearing. There is no question that what is commonly referred to the "Uniform Investigation Rule" stipulates there be such an exchange. In this respect, we concur with that part of the findings of Award No. 32 of PLB 6854, Arbitrator Francis X. Quinn, as offered by the Organization, that it was not incumbent upon the Claimant's representative to have reached out to the Carrier to request such exchange since it is evident in this case that the Carrier was well aware in advance of the hearing who the Claimant had chosen as his representative. Therefore, although we would caution the Carrier of a need to comply with this contract provision, we do not find the failure to have done so in the instant case to be of such egregious violation to conclude that discipline be set aside on that basis.


The Board does not, however, agree with Organization contentions that the Carrier violated the Uniform Investigation Rule in not listing in the notice of hearing GCOR Rules that were allegedly violated or that it intended to introduce into the record at the hearing. The Carrier notice contained "a clear and specific statement of the matters to be investigated and the nature of the charge or charges" in compliance with provisions of the Uniform Investigation Rule. In this respect, it must be borne in mind that the purpose of the hearing is to develop whether and to what extent, if any, the charged employee may have violated safety and operating rules as the incident the subject of investigation is brought forth or unfolds at the hearing.

In overall study of the record the Board finds no reason to disturb discipline as assessed by the Carrier. The claim will be denied.

Award: Claim Denied


Melissa A. Beasley-Coke
Carrier Member


Robert E. Peterson
Chair & Neutral Member


J. Michael LaPresta
Organization Member

Fort Worth, TX
Dated: March 27, 2018