

**BEFORE
PUBLIC LAW BOARD NO. 7499
CASE NO. 11
AWARD NO. 11
NMB Subject Code: 106**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 11-005-BNSF-154-TC))	PARTIES TO THE
vs.)	DISPUTE
BNSF RAILWAY COMPANY)	
(Carrier file: 35-11-0023))	

STATEMENT OF CLAIM:

“Carrier violated the current Signalmen's Agreement particularly Rule 54, when it wrongfully and inappropriately dismissed Mr. Salaba on January 31, 2011. He was denied the right to a fair and impartial investigation and the Carrier failed to prove the charges against him during the investigation. Carrier should now be required to remove all discipline imposed upon Mr. Salaba and immediately clear his record of any part of this incident. He should be immediately returned to work, be paid for all time lost and all his employment rights restored as if he was never dismissed.”

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated June 22, 2011 that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that on October 20, 2010, the Claimant was working as a Signal Maintainer at Coon Creek, Minnesota. During the course of that day, he walked over a main track and then walked over a bridge, and in a control point, allegedly without proper main track authority.

As a result, the Carrier held an investigation, after agreed-upon postponements, on January 5, 2011. The Carrier dismissed the Claimant on January 31, 2011. The Organization appealed this discipline through the proper process under the Collective Bargaining Agreement between the parties. The parties have been unable to resolve this issue and after an on-property conference, they have placed the issue before this Board for adjudication.

The BNSF Maintenance of Way Operating Rules and Instructions in question are *“Maintenance of Way Operating Rule (MWOR) 6.3.1 — Main Track Authorization.”*

Organization Argument:

The Organization says that the Carrier has not proven the charges against the Claimant. They also say that, presumably if there was a violation, it was caused or at least contributed to by the failure of management to perform an adequate job briefing during the course of the day as circumstances on the job site changed.

With respect to the allegation that the Carrier has not met its burden in proving the elements of the violation, they say that there was no evidence introduced that showed measurements proving that the Claimant fouled the tracks without adequate site distance.

The Carrier says that the Claimant did not have the proper distance towards the east to react 15 seconds before a train arrival at the work site. The Carrier says that this statement was made by Mr. Scott but the Organization says that the Carrier failed to have any measurements to validate their assumed distance. They say that in order for the Carrier to be correct on this assumption, they are obligated to provide proof of their charge and that they failed to do this.

With respect to shared responsibility, the Organization says that the Federal Roadway Worker Protection Act clearly requires that when a task has changed for a group of workers working under this rule, they must regroup and redefine their new work tasks and how they are going to get it done. When the work task changed from what they originally briefed each other on, it required them to stop work and again re-brief each other on how the new task was to be completed, noting all potential dangers and rule compliance for getting it done safely. The new briefing would have required discussing new possible work hazards, as well as discussing the route to the new location. They say that this was not followed by Signal Supervisor Scott. They say that when Mr. Scott failed to do what he was required to do, he held some responsibility for what happened that day. They also say that the Claimant was a relatively new employee who had minimal familiarization with this location.

As a result, they say, the claim should be allowed as presented.

Carrier Argument:

The Carrier says that the Claimant did not have adequate sight distance when he fouled the tracks and crossed the bridge. They provide no specific evidence of the actual sight distance but point to the transcript of the investigation where the Claimant, at page 39, indicates that he had adequate sight distance to the west but may not have to the east. They also point out that the fouling rules in a control point state that a worker can walk across the rails but not walk parallel to the tracks within four (4) feet of a rail. Mr. Salaba was observed walking between the rails of Main Track One over a bridge without proper authority or protection, which is prohibited by the rule he was charged with violating. They say he admits as much in his testimony (p.39). Further, they say, the Organization admits that they "...never once tried to deny the fact Matt Salaba walked in a control point." (p.60).

With respect to the issue of shared responsibility, they point out that the supervisor reported that there were job safety briefing updates as required throughout the day, although no further specifics were offered and it is clear that the supervisor did not mention the nearby road to the Claimant, which would have obviated the need to walk across the bridge. They also point out that the Claimant was an experienced signal employee who had been trained in the rules and should have known them.

With respect to the penalty, the Carrier says that this was the Claimant's second Level S infraction within a 30-month period, and therefore, under PEPA, dismissal is warranted.

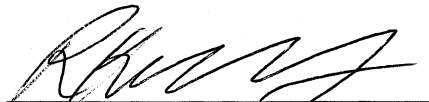
Result:

This Board finds that the Claimant did violate the Rule in question. Walking across a bridge, between the rails, without adequate sight distance is a violation. The Claimant did not dispute that he did not have adequate sight distance in at least one direction.

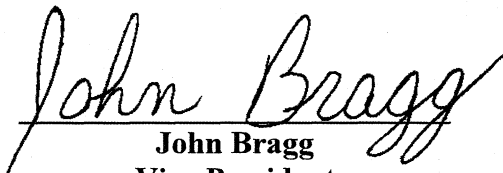
However, the evidence also leads this Board to the conclusion that the job briefings left something to be desired. This was an employee with very little service on this territory. The job requirements changed during the day and he was sent to do something different, on his own. Even though he was rules-qualified, and had some signal experience, it undoubtedly would have been better for the supervisor to complete a full re-brief, and tell him to take the road instead of the bridge to get to the new location. The evidence of continual briefings throughout the day is sketchy at best. While this does not condone the violations by the Claimant, as the Organization would urge, it does at least mitigate the ultimate assessment of responsibility.

AWARD

The Claim is sustained, in part. The Carrier is ordered to reinstate the Claimant forthwith, with seniority unimpaired, without compensation or other benefits for the time out of service.



Roger K. MacBougall
Chair and Neutral Member



John Bragg
Vice-President
Employee Member



Michelle McBride
Director Labor Relations
Carrier Member

Dated: 6/29/12

At: Chicago, IL