

**BEFORE  
PUBLIC LAW BOARD NO. 7499  
CASE NO. 12  
AWARD NO. 12  
NMB Subject Code: 106**

<b>BROTHERHOOD OF RAILROAD SIGNALMEN</b>	)	
(Organization file: 11-006-BNSF-172-AZ)	)	<b>PARTIES TO THE</b>
<b>vs.</b>	)	<b>DISPUTE</b>
<b>BNSF RAILWAY COMPANY</b>	)	
(Carrier file: 35-11-0024)	)	

**STATEMENT OF CLAIM:**

*“Carrier should now be required to remove all discipline imposed upon Mr. Joe and immediately clear his record of any part of this incident with his record cleared immediately and restored as if he was never disciplined.”*

**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 from October 2010 through January 2011, the Claimant was working as a Signal Maintainer on mobile gangs for the Carrier. As a Signal Maintainer, the Claimant was governed by the Federal Hours of Service Act at all material times. This Act requires that the employee log hours and then file the completed logs in order to ensure compliance with this law. Carrier Signal Instruction Manual 1.1 requires that the employee file his completed logs within five calendar days from the end of each pay period. There are two pay periods every month, ending on the 15th and the last day of the month. In mid-December the Claimant’s supervisor was notified that the Claimant had neither submitted his hours-of-service (HOS) logs for the entire month of October 2010 nor for the first half of November. On December 16, the Supervisor notified the Foreman on the Claimant’s gang, Mr. King Attica, that the Claimant needed to get the missing logs submitted as soon as possible. However, the logs were not received until the first part of January 2011.

As a result, the Carrier held an investigation, after agreed-upon postponements, on January 24, 2011. The Carrier assessed the Claimant a 10-day record suspension on February 10, 2011 for his violation of Signal Instruction Manual 1.1 — Hours-of-Service Act and Maintenance of Way Operating Rule (MWOR) 1.13 — Reporting and Complying with Instructions. 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 Signal Instructions 1.1, p.2 *"Hours of service logs must be received within five (5) calendar days from the end of each pay period."*; and

**1.13 Reporting and Complying with Instructions**

*"Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties."*

**Organization Argument:**

The Organization says that the Carrier has not proven the charges against the Claimant. They say that, as he testified, the Claimant mailed the information at the appropriate time, as required. Alternatively, he left it at the front desk of the hotel in which he was staying in order for it to be mailed in a timely fashion. They say that when minor mistakes in the forms were brought to the attention of the Claimant he corrected them immediately and sent them back. They say that he mailed the forms 5 times, the last 2 by certified mail (even though certified mail was not required). They also say that whenever the Carrier requested any information from the Claimant, he supplied it in a timely manner.

**Carrier Argument:**

The Carrier says that they did not receive the Hours-of-Service logs for October and November until January, and then only the copies mailed by certified mail, far beyond the 5-day limit from the end of the pay periods in question. They say that regardless of whenever the logs were sent, the Rule requires that they be received within 5 days. They never were. They say further that, even aside from the October logs, the request of December 16 was not met until at least January 11, 2011, or later.

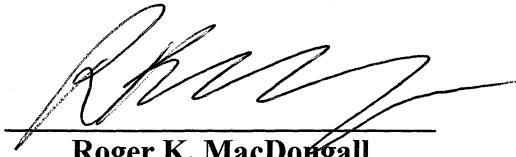
**Result:**

This is a case of conflicting evidence. The Claimant says he mailed the required information in a timely fashion. The Carrier says it was never received – on multiple occasions. However, even if the Claimant is correct in the days he said he mailed the logs, this still does not explain the gap between December 16 (when the gang foreman was told about the discrepancies) and January 3 when the logs were first received (although apparently in an incorrect form). As a result, when viewed as a whole, this Board finds that the Claimant has failed, on one or more occasions, to comply with the Rule.

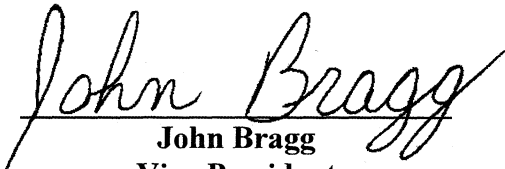
As a result, the Claimant is guilty of the offense charged. In the circumstances, this Board sees no reason to disturb the discipline assessed by the Carrier.

**AWARD**

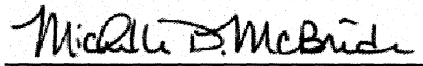
The claim is denied.



**Roger K. MacDougall**  
**Chair and Neutral Member**



**John Bragg**  
**Vice-President**  
**Employee Member**



**Michelle McBride**  
**Director Labor Relations**  
**Carrier Member**

Dated: 6/29/12

At: Chicago, IL