

**BEFORE
PUBLIC LAW BOARD NO. 7499
CASE NO. 17
AWARD NO. 17
NMB Subject Code: 106**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 11-016-BNSF-188-SP))	PARTIES TO THE
vs.)	DISPUTE
BNSF RAILWAY COMPANY)	
(Carrier file: 35-11-0034))	

STATEMENT OF CLAIM:

“Carrier should now be required to remove all discipline imposed upon Mr. Holland and immediately clear his record of any part of this incident.”

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 January 27, 2011, the Claimant was a Signal Maintainer for the Carrier, headquartered at Mount Vernon, WA, with approximately three years of service. It is uncontroverted that on the day in question, the Claimant had set his hyrail vehicle on the track on the Bellingham Subdivision. Another hyrail vehicle rounded the corner some distance away, saw the Claimant and his vehicle on the track and stopped short of any incident. The Carrier says that the Claimant was not authorized to be on the track at that time.

As a result, the Carrier sent a Notice of Investigation to the Claimant on January 28, 2011. There were then a series of agreed-upon postponements. The Carrier held an investigation on March 31, 2011. Following the investigation, the Carrier assessed the Claimant a Level S, 30-day Record Suspension on April 21, 2011 for his failure to contact all employees listed on the joint authority in effect before occupying the track and failure to designate the Employee In Charge of overlapping limits before he set his hyrail vehicle on the track at or near MP 83.4 on the Bellingham Subdivision, in violation of MOWOR 6.3.1. 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 MOWOR Rule in question states, in relevant part:

“6.3.1 Main Track Authorization – Overlapping Authority

When an employee receives joint authority, the employees must not occupy the overlapping limits until employees and/or trains listed on that authority are contacted. A job briefing must determine the location of all working limits. The job briefing must designate only one employee as the EIC of overlapping working limits.”

Organization Argument:

The Organization argues that the Claimant was denied a fair and impartial hearing since information was presented without one of the witnesses from the other hyrail being present to be cross-examined (although another one was).

They further say that the Claimant was not proven to have been trained on the specific rule in question. They say that he was not aware of the proper interpretation of the rule. Therefore, they say that it is not proper to hold the Claimant responsible for any failure to abide by the rule.

Carrier Argument:

The Carrier says that even though the witness in question was not present, his statement merely corroborated the same eyewitness account of the Carrier officer who was present for testimony and cross-examination at the investigation. They say that even without the witness in question being present, the witness that was there was credible and produced unrefuted facts. Specifically, they say that his testimony proves that the Claimant's hyrail was on the track without proper authorization. Similarly, they say that this witness proved that the Claimant, himself, was on the track.

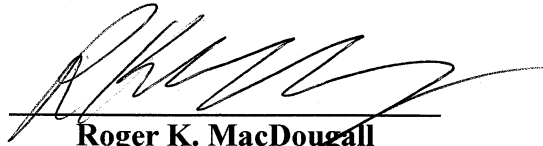
The Carrier says that the Claimant asserted that he attempted to contact the other employees but was unsuccessful. He even attempted to have the dispatcher assist him in contacting the other employees. Faced with this failure of communication, the Claimant still put his hyrail on the track in violation of the rule. They say that the Claimant therefore knew that he should have contacted the other employees but did not. They say that employees are required to thoroughly understand and adhere to all applicable rules.

Result:

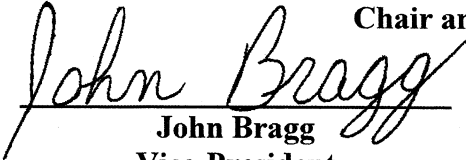
This Board finds that the Claimant did violate the rule in question. Further, the Organization's claim that he was not properly trained or examined on the particular rule does not stand up to scrutiny based on the evidence before this Board. It is the responsibility of each employee to understand all rules by which they are governed. This employee apparently did not understand the rule in question. It was his responsibility to do so. It was fortunate that his failure to abide by the rule did not result in a catastrophic incident.

AWARD

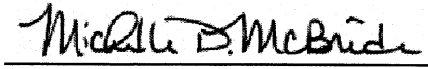
The claim is denied.



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