

**BEFORE
PUBLIC LAW BOARD NO. 7499
CASE NO. 18
AWARD NO. 18
NMB Subject Code: 106**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 11-024-BNSF-188-SP))	PARTIES TO THE
vs.)	DISPUTE
BNSF RAILWAY COMPANY)	
(Carrier file: 35-11-0039))	

STATEMENT OF CLAIM:

"Carrier should now be required to remove all discipline imposed upon Mr. Freeman 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 March 11, 2011, the Claimant had approximately 4 years of service and was the designated boom truck operator for a Signal Construction crew of the Carrier, in Washington State. On that date, the Claimant was operating the boom on the truck, with the outriggers extended, and a load hanging from the boom, when a supervisor approached. The supervisor noticed that there was no bright orange steering wheel cover in place, to remind people to retract the boom and outriggers prior to moving the truck, as required by a rule.

As a result, the Carrier sent a Notice of Investigation to the Claimant on March 28, 2011. There were then a series of agreed-upon postponements. The Carrier held an investigation on May 19, 2011. Following the investigation, the Carrier assessed the Claimant a Level S, 30-day Record Suspension on June 7, 2011 for violating EI 15.5 Vehicles Equipped With Cranes. 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 Engineering Instruction in question states, in relevant part:

"15.5 Vehicles Equipped With Cranes

See Engineering Instruction 14 Roadway Equipment, specifically section 14.10 (Cranes and Boom Trucks). All vehicles equipped with cranes must be equipped with a standardized steering wheel cover with a message reminding the driver to stow boom and outriggers prior to travel. The truck driver must place the cover over the steering wheel when the boom and

outriggers are deployed. The specified steering wheel cover, with the message, "Danger. Do Not Operate ... Verify Boom Stowed ... Verify Outriggers Stowed," has been assigned BNSF Item No. 362050005."

Organization Argument:

The Organization argues that the rule requires that the steering wheel cover be placed on the vehicle prior to pulling in the boom and outriggers, prior to moving the vehicle. They say that the Claimant did this. They say that the proper interpretation of the rule is that the cover need not be placed on the wheel prior to or during the deployment of the outriggers and boom.

Therefore, they say, the Carrier has failed to prove its case. They also say that the Carrier witness was evasive and changed his testimony during the course of the investigation.

Carrier Argument:

The Carrier says that the Claimant admitted that he was operating the boom truck without the steering wheel cover in place. They say that the Organization's interpretation is interesting but quite obviously wrong. They say that the reasonable interpretation of the rule is that the cover must be placed on the steering wheel when the boom and outriggers are being deployed, not at some later time.


Result:

This Board finds that, while the rule could perhaps be more clearly written, it does not make sense to adopt the interpretation suggested by the Organization. If it were adopted, the boom truck could be operated for hours and then, immediately prior to retracting the boom, the steering wheel cover could be put in place. This does not seem, to this Board, a reasonable interpretation of the rule. This Board, therefore, adopts the interpretation urged by the Carrier.

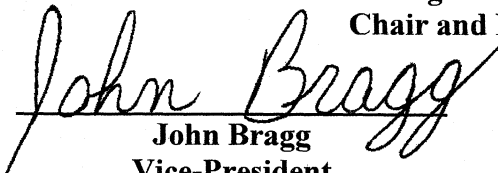
As a result, in considering the whole of the evidence, the Carrier has met its burden of proof and the Claimant is guilty of violating the rule.

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