

**BEFORE
PUBLIC LAW BOARD NO. 7499
CASE NO. 19
AWARD NO. 19
NMB Subject Code: 106**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 11-026-BNSF-121-T))	PARTIES TO THE
vs.)	DISPUTE
BNSF RAILWAY COMPANY)	
(Carrier file: 35-11-0040))	

STATEMENT OF CLAIM:

“Carrier should immediately clear Mr. Smith's personal record of any reference to the discipline or this event.”

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 April 13, 2011, the Claimant was a Signal Maintainer on a mobile gang for the Carrier, with approximately ten years of service. On that date, the Carrier says the Claimant was observed fouling the main track without proper protection.

As a result, after an agreed-upon postponement, the Carrier held an investigation on May 16, 2011. Following the investigation, the Carrier assessed the Claimant a Level S, 30-day Record Suspension on June 8, 2011 for violating MOWOR 6.3.1 Main Track Authorization. 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.

Organization Argument:

The Organization argues that the Carrier has failed to meet its burden of proof. They say that the only witness to testify was over 500 feet away in a curve and could not possibly have accurately determined that the Claimant was foul of the track from that distance. They say that while one employee admitted to being foul of the track, the Claimant maintains that he never was. Instead, his testimony is that he was at the signal bungalow, well clear of the fouling point of the main track. He was very specific in his testimony that he was so close to the bungalow, his head could have hit the door. They say that this testimony is directly at odds with that of the supervisor and that it could, possibly, have been cleared up had the Carrier produced the other witnesses. The Carrier did not, and therefore, they say, the Carrier failed to meet its burden.

Carrier Argument:

The Carrier says that their witness actually said that when he first saw the Claimant, he was some 500 feet away. However, they say, he was closer when the two Signal Maintainers cleared the track. Therefore, they say, they have met their burden of proof.


Result:

This Board finds that the testimony in this case is contradictory. It is clear that one employee was fouling the track. He admitted this. However, the testimony concerning the Claimant's position is directly at odds with that of the supervisor. There is no evidence as to exactly how close the supervisor was when he says he saw the employees clearing the track. The Carrier could have called other witnesses who might have been helpful in this case. They chose not to. After considering all of the evidence, this Board finds that the Carrier has not met its burden.

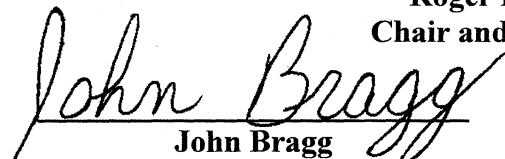
As a result, no discipline can be maintained.

AWARD


The claim is sustained.



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