

**BEFORE  
PUBLIC LAW BOARD NO. 7499  
CASE NO. 2**

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| <b>BROTHERHOOD OF RAILROAD SIGNALMEN</b>  | ) |                       |
| (Organization File No. 10-026-BNSF-133-T) | ) |                       |
| <b>vs.</b>                                | ) | <b>PARTIES TO THE</b> |
| <b>BNSF RAILWAY COMPANY</b>               | ) | <b>DISPUTE</b>        |
| (BNSF File No. 35-10-0020)                | ) |                       |

**STATEMENT OF CLAIM:** The Union requests that the record of Mr. Alan Shastid, Signal Electronic Technician, be cleared of a Level S 30 Day Record Suspension, and an accompanying 3 year probationary period, for allegedly violating MOWOR 1.13 (Reporting and Complying with Instructions).

**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 this case involves an alleged failure by Mr. Shastid to perform a monthly modem test in February of 2010.

The facts are relatively straightforward and generally not in dispute. The record shows that Signal Electronic Technicians are each assigned specific modems to test monthly. These modems are part of the Carrier's Centralized Traffic Control system, which involves the track signaling system. As part of these tests, there is a common sheet related to all modems, on which each Technician is to fill out the test results related to their specific modems. The sheet appears to be pre-populated with the modem numbers and the Technician initials related to each specific modem. In addition, there are columns for the Technician to record the monthly test results, by hand. It is common ground that the modem test result columns related to Mr. Shastid's assigned modems for February of 2010 are blank, while those related to other modems and Technicians are completed.

Emails from Carrier supervisors to Mr. Shastid, reminding him to do his monthly modem tests (which apparently had not been done for the previous months), were sent on January 9, 2009, February 22, 2009, March 22, 2009, April 29, 2009 and June 23, 2009. Further, on April 30, 2009, there is a supervisor email to all Technicians, updating the modem assignments and reminding them to do the monthly checks. Mr. Shastid was included in this email and specifically told to do his April 2009 test. On July 1, 2009, Mr. Shastid again received an email from his supervisor stating that he had failed to do his June modem tests and going on to quote the operating rules and stating that Mr. Shastid was in violation of the quoted operating rules. That same day, Mr. Shastid responded, saying "I'll do them tonight, and I'll try to be more timely in performing the checks in the future. Thank you for your forbearance." The Board notes that the Union states that these infractions are well beyond the time limits of the collective bargaining agreement. The Board agrees. However, it

appears that these records formed no part of the current discipline process, but instead were introduced by the Carrier to show that Mr. Shastid had prior notice of his obligations to perform the monthly tests. For this purpose, these records are relevant and admissible. The July 2009 modem check sheet does have the lines related to Mr. Shastid's assigned modems filled out.

When questioned about the lack of February 2010 test results, in an email from his supervisor on March 23, 2010, Mr. Shastid responded on March 24, 2010, by saying "You got me. I thought I had done February, but I must have been mistaken."

The NCS Group Office Modem Guide, dated April 21, 2008 states in relevant part that "NCS Technicians are required to do a monthly check of the DBU for each modem. The results of the test are to be documented on the modem DBU check list." Mr. Shastid claims that he was not aware of this document, and that, in any event, it is a guide.

Rule 1.13 of the Maintenance of Way Operating Rules states: "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."

Mr. Shastid was disciplined on May 7, 2010, for violating MOWOR 1.13.

Mr. Shastid, in the investigation, (in a line of argument progressed by the Union in the appeals process) says, in effect, that:

1. The monthly tests need not be done in a particular month;
2. It is the duty of the supervisor to remind him to do the monthly tests, and consequently, the failure to do so absolves the Claimant of the responsibility to do these tests for that particular month; and
3. The lack of test results on the sheet merely show that he failed to record the results, not that he failed to do them.

Finally, the Union further argues that the investigation notice is beyond the time limit specified in the collective bargaining agreement, and hence all resulting discipline must be struck from the record of the employee.

The Board will deal with these issues in the sequence outlined above.

Dealing with the first and second issues together, even if the Board were to accept that Mr. Shastid was not aware of the NCS Group Office Modem Guide, it is clear through both his prior conduct and through the extensive string of emails by supervisors to Mr. Shastid, that Mr. Shastid knew that the tests were to be done monthly. The Board also finds that it is not necessary, given the evidence before it, for a supervisor to remind any employee each month of what that employee's duties are. To do so would be to make a mockery of the employment relationship.

Mr. Shastid says that he may have done the tests and not recorded them. But that seems an incredible result and would defeat the very nature of the record that he knew he was required to make each month. Further, the Board finds that to do so, given how the tests are performed, is highly unlikely. Therefore, the Board prefers the evidence of the Carrier in

this respect – namely that the lack of the record on the sheet in question more likely indicates that the test was not done.

Finally, dealing with the timeliness issue raised by the Union, the agreement states, at Rule 54A, that: “An employee in service sixty (60) calendar days or more will not be disciplined or dismissed until after a fair and impartial investigation is held. Such investigation shall be set promptly to be held not later than fifteen (15) calendar days from the date of the occurrence, except that personal conduct cases will be subject to the fifteen (15) calendar day limit from the date information is obtained by an officer of the Carrier...”

The alleged incident was a failure to perform a test, and document that test, sometime within the month of February 2010. The record indicates that the sheet with the relevant blank lines was brought to the attention of a supervisor, by a fellow Technician, on March 23, 2010. The initial investigation letter was dated April 1, 2010, and was signed for by Mr. Shastid that same day. There was a subsequent, agreed upon, postponement until April 13, 2010, when the investigation was held. This Board holds that the Carrier was within the 15 days covered by the exception within Rule 54A, and therefore the April 1 Notice of Investigation was timely.

The Board therefore holds that the Carrier has met their burden of proof and that MOWOR 1.13 was violated, and that discipline of Mr. Shastid was justified.

We therefore turn to the quantum of discipline, which the Union contends was overly harsh.

Mr. Shastid is 52 year old employee, who has been employed by the Carrier since April 11, 2007. His record, prior to the date of the discipline which is the subject of this Award, consisted of a Level 00 Record Suspension of 0 days for sleeping on the job and failing to follow the instructions of a supervisor, in December of 2009.

The Board has reviewed the Carrier’s Policy for Employee Performance Accountability (PEPA). The Union has not argued that the Carrier violated it’s PEPA with respect to this discipline. It is well established that a Public Law Board under the Railway Labor Act sits as an appellate board when it comes to matters of discipline and cannot substitute its judgment for that of the Carrier. It only has the jurisdiction to alter the assessment of discipline if it finds that the Carrier’s actions were unjust, unreasonable or arbitrary. In this case, in all of the circumstances, the Board sees no reason to disturb the discipline assessed by the Carrier.

**AWARD**

The Claim is denied.

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

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**Kelly Haley**  
**Vice-President**  
**Employee Member**

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

Dated: \_\_\_\_\_

At: Chicago, IL