

PUBLIC LAW BOARD No. 6721

In the Matter of the Arbitration Between:

**BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY**

and

UNITED TRANSPORTATION UNION

NMB Case No. 170

Claim of K. A. Betterton

Dismissal - Failure to
Contact Dispatcher and to
Conduct Walking Inspection

STATEMENT OF CLAIM: Claim on behalf of Trainman K. A. Betterton requesting reinstatement to service, restoration of seniority and fringe benefits and pay for all time lost.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee, within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein, and that the parties were given due notice of the hearing which was held on October 10, 2014, in Washington, D.C. Claimant was not present at the hearing.

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Trainman and Yardman crafts. The Board makes the following additional findings.

On December 4, 2012, Claimant, who was hired on March 13, 2006, was working as a Brakeman at Fresno, California, on the M-BARRIC3-03A crew. Just before noon on that date, Claimant's train passed an approach signal at MP 1122.07 which required the crew to reduce speed to no more than 30 mph and be prepared to stop at the next signal. As the train crossed the San Joaquin Bridge the crew saw that the next signal was dark and, in order to stop prior to passing the signal, the Engineer had to place the train in emergency. After stopping, the train took 5 minutes and 39 seconds to recover its air, after which it proceeded past the signal at restricted speed. Although the Engineer placed the train in emergency and the signal was malfunctioning, no one on the crew contacted the dispatcher to inform him of the EIE or conducted a walking inspection of the train prior to their departure.

The Carrier convened an investigation at which the above evidence was adduced. Based on the record, the Carrier found claimant in violation of GCOR 6.23 (Emergency Stop or Severe Slack Action) and ABTHR 103.8.4 (Emergency Brake Applications - Reporting) and dismissed him from service.

The Organization protested the discipline, which the Carrier denied on appeal. The Claim was progressed on the property up to

and including the highest designated official, but without resolution. The Organization invoked arbitration, and the dispute was presented to this Board for resolution.

POSITIONS OF THE PARTIES: **The Carrier** argues that it met its burdens to prove Claimant's violations of the Rules and the appropriateness of the penalty. It maintains that Claimant's violations were "serious" because the rules were designed to protect employees and the public from potentially serious injury or death. BNSF contends that Claimant admitted his violations and, in his closing statement, essentially asked for leniency. The Carrier contends, citing numerous awards, that, when an employee admits guilt, it has satisfied its burden of proof. It asserts that, in any case, leniency is up to it, not this Board.

As to the penalty, BNSF argues that this is Claimant's second serious violation in less than a year and third in his six-year career. It maintains, therefore, that dismissal was appropriate. It contends that, if the Board determines otherwise, Claimant's request for back pay should be denied since he admittedly violated the cited rules.

As to the Organization's argument - that Claimant was the junior person on the crew and looked to the other members of the crew to comply with the rules - the Carrier contends that it is without merit. It asserts, citing authority, that an individual cannot avoid responsibility for his or her actions by transferring it to someone else.

The Carrier urges that the Claim be denied as without merit.

The Organization argues that the Carrier failed to meet its burden to prove Claimant's guilt by substantial evidence. It contends that the Carrier is only interested in punishing Claimant and not assessing the blame where it belongs.

The Organization argues that Claimant had no reason to believe that he needed to take control of the train, as he rightfully thought that the engineer and conductor were doing their jobs and handling the situation. It points out that the record does not indicate what discipline was issued to either of them. The Organization asserts that there was no job briefing prior to the trip, that Claimant did not know that the train was a "key train" and that he did not know the speed of the train and, therefore, had no basis to object to the conductor or engineer not inspecting the train. Finally, it maintains that Claimant is a well-liked and respected member of the BNSF family, in support of which several employee statements were provided.

The Organization urges that the Claim be sustained and the suspension expunged from Claimant's record and that he be made whole for wages and benefits lost.

DISCUSSION AND ANALYSIS: The Board is persuaded that the Carrier met its burdens of proving Claimant to have violated GCOR Rule 6.23 and ABTHR 103.8.4 and of proving that the penalty imposed was neither arbitrary nor excessive. His admission that he was guilty of violating the rules leaves no doubt of his guilt.

The Board has carefully considered, but is not persuaded by, the Organization's challenge to the discipline imposed. Rule 6.23 requires the crew, not any particular member, to complete a walking inspection after an emergency application of the train brakes. Similarly, Rule 103.8.4 requires the crew, not any particular member, to contact the dispatcher in the case of an emergency brake application. As a six-year employee, Claimant was familiar with these rules and, as a member of the crew, he was equally responsible as any other member, to abide by them.

The evidence presented establishes Claimant's two previous serious violations, one of which took place less than 12 months before the conduct at issue. That record subjected Claimant to dismissal under PRPA. The circumstances of Claimant's violation are not sufficient to render the penalty arbitrary or unreasonable.

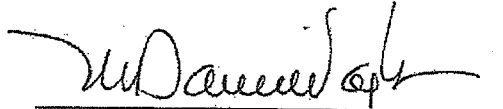
The Board is similarly unconvinced by the Organization's contention that Claimant should be shown leniency. As an initial matter, leniency is not the prerogative of this Board. More to the point, Claimant has a history, in his relatively short tenure, of having committed serious violations of the rules.

Given the nature and circumstances of his violations, the Board concludes that the penalty of termination was within the range of reasonableness. The Award so reflects.

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AWARD: The Carrier met its burdens to prove Claimant guilty of the charges and to prove his dismissal to have been an appropriate penalty. The claim is denied.


Dated this 5th day of November, 2014



M. David Vaughn,
Neutral Member



Jason Ringstad,
Carrier Member



D. L. Young,
Employee Member