

PUBLIC LAW BOARD NO 7026

AWARD NO. 15
CASE NO. 15

PARTIES TO
THE DISPUTE

UNITED TRANSPORTATION UNION
(COAST LINES)

VS.

BNSF RAILWAY COMPANY

ARBITRATOR: John L. Easley

DECISION: Claim Denied

DATE: May 25, 2007

STATEMENT OF CLAIM:

Claim of Southwest Division Conductor G. J. Cruz for removal of a Level S Thirty Day Record Suspension from his personal record and pay for time lost attending formal investigation held January 24, 2006.

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by the agreement of the parties, that the Board had jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Conductor Cruz, hereinafter referred to as the Claimant was advised by letter dated December 7, 2005 to attend formal investigation as follows in pertinent part:

“Attend formal investigation at the BNSF Mobest Conference Room, 707 North 20th Avenue, Phoenix, Arizona, on Monday December 12, 2005, at 9:00 A. M., with your representative and witness (es), if desired, to develop the facts and place responsibility, if any, in connection with possible violation of Rules 1.1.1, 1.1.2, 6.28 and 7.8 of the General Code of Operating Rules, Fifth Edition, effective April 3, 2005, as supplemented or amended, concerning your alleged failure to observe and take appropriate action regarding close clearance when shoving into track 1212, Glendale, while working as conductor on Train R-SWE0034-13, at approximately 9:30 P. M., November 13, 2005.”

The hearing was properly postponed until January 24, 2006, at which time the following facts were adduced. The Claimant was in charge of Road Switcher Assignment R-SWE0034-13,

on the incident date he was riding the point on a twenty to twenty five car cut on track 1212 into a facility known as Reload Incorporated. The general conditions were that it was quite dark and there were no lights turned on at the industry. The Claimant was on the south side of the lead car using radio transmission to control the movement of the cut, using his lantern he saw the first of three stacks of light rail adjacent to track 1212. He was able to squeeze by the first two stacks but was knocked off the car he was riding by the third stack.

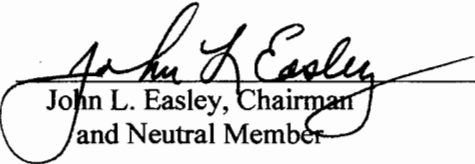
OPINION OF THE BOARD:

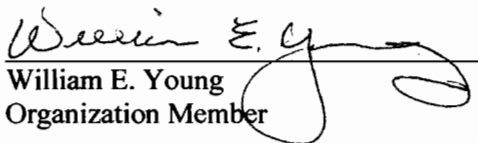
During the course of the hearing the Claimant's Local Chairman stressed that there had not been written notification of lack of proper clearance at the reload facility, even though it had been reported to the local Trainmaster the day before. He further argued without adequate lighting it was difficult to see obstacles and generally that the accident was someone else's fault. Regardless of the smoke screen the Claimant must take responsibility, he was in charge of the movement and when he saw the first stack (referred to as a pile in the transcript) of rail the prudent thing would have been to stop and proceed on foot.

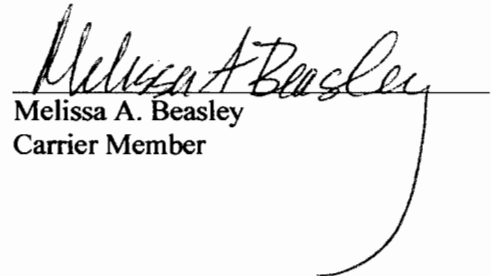
The Board holds that the discipline assessed is consistent with Carrier policy and will not be modified.

AWARD:

Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organization Member


Melissa A. Beasley
Carrier Member