

PUBLIC LAW BOARD NO 7026

AWARD NO. 14
CASE NO. 14

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 A. Ballejos for removal of a Level S 74 day suspension from his personal record and pay for all time lost without deduction of outside earnings.

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 A. Ballejos hereinafter referred to as the Claimant was instructed by letter dated July 26, 2005, to attend a formal investigation as follow in pertinent part:

“Attend formal investigation at the BNSF Conference Room, 106 North First Street, Belen, New Mexico, on Monday, August 8, 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 1.2.7, 1.4, 1.47, 1.6, 6.4, 6.5, 6.27, 9.5, 9.12.1, and 9.16, of the General Code of Operating Rules, Fifth Edition, effective April 3, 2005, as supplemented or amended; and Rules 9.1.14 and 9.1.15 of BNSF System Special Instructions All Subdivisions No. 10, effective April 3, 2005, as supplemented or amended; concerning your alleged failure to comply with signal displaying stop indication at East Gallup, your alleged failure to comply with stop and proceed signal at MP 157.5, your alleged failure to properly protect reverse movement, resulting in impact collision with Train Z-SBDALT1-20S,

and your alleged misrepresentation of the facts concerning the incident, while you were working as crew on Train X-SWAEDU9-18A at approximately 12:27 a.m. July 21, 2005, on the Gallup Subdivision, Southwest Division.”

Subsequent to several postponements the hearing was held September 9, 2005. The salient facts adduced were that the Claimant was in charge of eastbound train X-SWAEDU9-18A, stopped at Mile Post 154.1 a point Between Gallup and Zuni, New Mexico. The Claimant was instructed by the Train Dispatcher to back his train westward on Main One toward East Gallup, in anticipation of being crossed over to Main Two in order to runaround a train ahead on Main One. He was furnished transportation to the rear of his train via a “rapid responder” van. The Claimant chose to remain in the van and direct the reverse movement of his train by radio from the cab located on the highway instead of riding the point. He backed his train through a control signal displaying stop at Mile Post 156.5, and a past a stop and proceed signal displaying a stop indication at Mile Post 157.5. The crew on train Z-SBDALT1-20S stopped on Main One noticed a rear end device moving in their direction alerted the Claimant that the track was occupied and of the impending collision. The claimant advised his engineer to stop the train. However, the rear of Claimants train impacted the Z-SBDALT1-20S at about 6 miles per hour, this did not cause any damage to the equipment.

The Organization raised several procedural questions concerning the conduct of the hearing, which in their view prejudiced the outcome denying the Claimant a fair and impartial hearing.

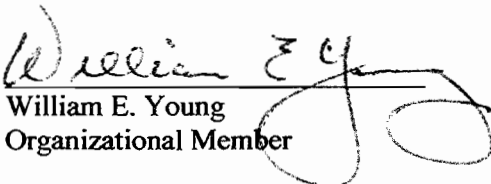
The Board has reviewed the transcript and does not concur that there was procedural misconduct that would preclude the Claimant from receiving a fair and impartial hearing.

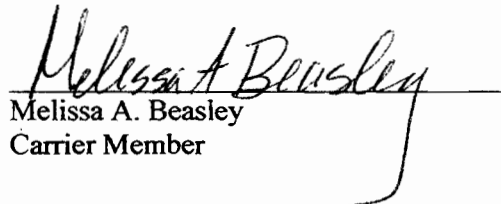
The Board will take this opportunity to comment on the hearing which created a transcript in excess of 150 pages. It was replete with unnecessary comment from both the Carrier Officer conducting and the Organization representatives. Article 13 of the Trainmen Schedule is a joint agreement which requires that the hearing be fair and impartial and that all essential facts be developed. The Organization has a joint responsibility to develop the true facts and those facts will speak for themselves. The Carrier will then know what transpired and how to prevent a recurrence. It appears that many industrial hearings are being influenced by television crime dramas and the entertaining court room antics.

The Board holds that the discipline assessed was warranted and will not be modified.

AWARD: Claim Denied.


John L. Easley, Chairman
and Neutral Member


William E. Young
Organizational Member


Melissa A. Beasley
Carrier Member