

**PUBLIC LAW BOARD NO. 7204**

**UNITED TRANSPORTATION UNION** )  
 )  
 **vs.** ) **CASE NO. 7**  
 ) **AWARD NO. 7**  
 )  
**BNSF RAILWAY COMPANY** )

**STATEMENT OF CLAIM:**

Claim in behalf of Great Falls, MT Conductor L.A. Watson for complete record clearance account thirty (30) day record suspension for alleged violation of GCOR Rule 8.2 (alleged running through switch) on October 19, 2004.

**FINDINGS:**

Public Law Board No. 7204, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

The Claimant, L.A. Watson, had been employed by the Carrier for approximately a little more than one year at the time of this incident. On October 21, 2004, the Carrier charged Claimant to attend an investigation "for the purpose of ascertaining the facts and determining responsibility, if any, in connection with your alleged running through switch on the west end of 2914 at Shelby Yard at approximately 2300 hours on October 19, 2004 while working as crew member on Train L-MON8241-19G on duty at 1900 hours on October 19, 2004." Following the investigation, Claimant was found guilty of the charges and, taking into account his personal record, assessed a 30-day record suspension.

Claimant began work as the conductor on train L-MON8241-19G (the Oil Local) at 2140 hours on October 19, 2004; his tour of duty ended at 0130 hours on October 20, 2004. Claimant arrived late as the result of a calling error, and his crew members, an engineer and brakeman, had begun work and were switching at the west end of Shelby Yard. They left the west end Track 4 switch lined for the lead track and Track 5, and so informed Claimant. After Claimant arrived, he and his engineer moved a rail car and two locomotives from the yard's east to west end, a move that involved traveling westward on Track 4 and through the Track 4 switch. Claimant denied that the move took place on October 19, 2004.

After Claimant and his crew completed their work, it was necessary for another train to utilize the west end Track 4 switch. However, that train's brakeman could not line the switch for his movement, and it appeared that it had been run-through, a condition Carrier officers confirmed the morning of October 20. They determined that the switch had been positioned for movement down the lead and into Track 5, not lined for movement from Track 4 to the lead track. They also determined that Claimant's crew had last used the switch before the other train's crew attempted to do so.

During the movement at issue, the rail car was on the east end of the movement and the locomotives were on the west end. While Claimant testified that he was riding in the rail car, facing away from the movement, ~~the~~<sup>his</sup> crew members' testimony was that he was on the west end. Claimant's engineer stated that Claimant was protecting the move on Track 4 and was responsible for the position of the switch.

Claimant's engineer testified that as their train moved down Track 4, he stopped the movement because he questioned whether the switch was properly lined. He stated that he radioed Claimant, who told him that everything was fine and to proceed. Claimant testified that his brakeman had informed him the switch was properly lined, so he did not stop and check to make sure, contrary to his usual practice.

The Carrier first points out that there is no dispute the switch at the west end of Track 4 had been run through. The record, the Carrier asserts, establishes that the move through the switch occurred during Claimant's tour of duty, despite his contrary contentions. Moreover, the Carrier states, the evidence, including the testimony of Claimant's crew members, establishes that Claimant was riding the west end, facing the direction of the movement. The Carrier adds that the evidence shows Claimant was responsible for protecting the move down Track 4 and for lining the switch for his intended route. The Carrier concludes that Claimant failed to line the switch and instead ran through. The Claimant's contrary testimony, the Carrier asserts, is simply not credible, and this Board should not disturb the Hearing Officer's resolution of the conflicting testimony. Given Claimant's guilt of this offense, and his prior disciplinary record, the Carrier asserts that it acted properly in issuing him a 30-day record suspension.

The Organization contends that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. Claimant, the Organization notes, testified that he did not work on the west end of the Shelby Yard on October 19, 2004, and that he worked on the east end on October 20, 2004. Also, the Organization notes, Claimant testified he did not run through a switch at the time and place set forth in the investigation notice, and that he made a point of stopping at every switch before proceeding. The Organization asserts that Claimant's testimony was explicit, unlike that of the other witnesses, and the Carrier produced no documentation to substantiate the work performed. Therefore, the Organization concludes, the claim should be denied.

The Board has carefully reviewed the record in its entirety. There is no dispute that Claimant and his crew made a move over the switch in question, and that the switch

was subsequently determined to have been run-through. While Claimant denied that the move occurred on October 19 and that he had any responsibility for failing to properly line the switch, the other evidence, including the testimony of his crew members, establishes otherwise. It is well established that it is the function of the Hearing Officer, not this Board, to resolve credibility conflicts, and absent a showing that the Hearing Officer's determinations are unreasonable or lacking in record support, they will not be overturned. There is no such showing here. The credited testimony is sufficient to satisfy the Carrier's burden of proving Claimant's guilt by substantial evidence.

Given Claimant's guilt, and his previous disciplinary record, we cannot say that the 30-day record suspension assessed by the Carrier is an unfair, arbitrary or discriminatory exercise of its discretion.

**AWARD**

**Claim denied.**

  
**JACALYN J. ZIMMERMAN**  
**Neutral Member**

  
**ROGER BOLDRA**  
**Carrier Member**

  
**J.L. SCHOLLMAYER**  
**Organization Member**

**Dated this 31<sup>ST</sup> day of March , 2009.**