

PUBLIC LAW BOARD NO. 7221

UNITED TRANSPORTATION UNION)
)
 vs.) CASE NO. 9
) AWARD NO. 9
)
BNSF RAILWAY COMPANY)

STATEMENT OF CLAIM:

Claim in behalf of Minot, ND Brakeperson M.K. Nesdahl for lost earnings to attend investigation and complete record clearance of the entire incident account, Level S, thirty (30) day record suspension for alleged violation of Rule S-13.1 of TY & E Safety Supplement (alleged failure to follow proper procedure when going in between cars) on August 15, 2001.

FINDINGS:

Public Law Board No. 7221, 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.


We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, the record demonstrates that the Carrier has not met its burden of proving Claimant's guilt by substantial evidence. Therefore, we order that the disciplinary action taken against him be overturned and all reference thereto expunged from his personal record.

AWARD

Claim sustained. The Carrier is directed to comply with this Award within 30 days.


JACALYN J. ZIMMERMAN
Neutral Member


ROGER BOLDRA
Carrier Member


J.L. SCHOLLMAYER
Organization Member

Dated this 31st day of October, 2008.