

PUBLIC LAW BOARD NO. 7254

**PARTIES) UNITED TRANSPORTATION UNION
TO)
DISPUTE) BNSF RAILWAY COMPANY**

STATEMENT OF CLAIM:

Claim and appeal in behalf of Willmar, MN Conductor J. C. Larsen for pay for all time lost, including attending investigation, and complete record clearance of the entire incident, account Level S, thirty (30) day record suspension for alleged violation of ABTH Rule 100.15 (alleged failure to perform an application and release (Class 3) air brake test before departing Breckenridge, MN on train H-LINDIL1-27 on November 29, 2007. (UTU File: DISP LARSEN 11/29/07; Carrier File: 53-08-0004)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon. Claimant was present for and provided opportunity to participate hearings on this case.

The discipline at issue, a Level S 30-day record suspension, arises from a Carrier determination following a company hearing that was held on January 3, 2008 that Claimant was guilty, as charged, of a failure to perform an application and release of a Class 3 Air Brake test on November 27, 2007 while operating in conductor only service and making a straight set out of cars at Breckenridge, an intermediate point on his assigned run.

Testimony developed from a download review of the operation of Claimant's train is shown to reveal that after making a set out at Breckenridge, Claimant coupled his engine back to the remaining part of his train, coupled the air hoses between the locomotive consist and the train, and removed the hand brakes from his train before immediately returning to the locomotive and thereafter departing Breckenridge without an air brake test of any kind having been performed.

In defense of Claimant it is argued that he performed all of his assigned duties as a Conductor, and that Carrier rules only allows a qualified Engineer to perform a Class 3 Air Brake test, or basically a function for which Claimant is not qualified.

Further, the Organization submits that the train's Engineer signed an Alternative Handling in acceptance of what the Organization says was an acknowledgement of full responsibility for the failure to perform the air test in question.

Contrary to such argument, the Carrier submits that while it is technically true that Claimant could not perform a Class 3 Air Brake test, Conductors are equally responsible for the safe operation of the train, including numerous duties that they do not physically perform. For example, the Carrier says a Conductor must ensure that the Engineer: (1) operates the train at the proper speed; (2) stops at red signals; (3) complies with slow orders; (4) complies with Form B orders; (5) properly blows the whistle at road crossing; and (6), as in this case, performs proper air tests.

Thus, the Carrier says Claimant knew that a Class 3 Air Brake test had to be performed at Breckenridge after making the set out in accordance with ABTH Rule 100.15, and that Claimant should have discussed the air test during a safety briefing that had been held before making the set out. The Carrier also submits that Claimant knew or should have known that the Engineer could not perform the Class 3 Air Brake test without first knowing Claimant's location as is required under ABTH Rule 100.5


As concerns procedural argument advanced by the Organization, the Board finds such argument to be either without merit or not sufficient to conclude that Claimant had been denied benefit of a fair and impartial hearing,


In regard to the discipline as assessed, the Carrier says a failure to perform a proper air test not only violates its rules and FRA requirements, but is flat out dangerous in that the train was operating on the main line without proper control since the air brakes were not properly operable.

The Board finding no basis to disturb discipline as administered by the Carrier, the claim will be denied.

AWARD: Claim denied.


Robert E. Peterson
Chair & Neutral Member


Roger A. Boldra
Carrier Member


Jay L. Schollmeyer
Organization Member

Fort Worth, TX

Dated: 11-17-09