

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14084  
Docket No. 13986  
14-2-NRAB-00002-140017**

**The Second Division consisted of the regular members and in addition Referee Joseph M. Fagnani when award was rendered.**

**(Brotherhood Railway Carmen-Division of TCU/IAMAW  
PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

- “1. That the Burlington Northern Santa Fe violated the terms of our current Agreement, in particular Rule 35(a), when on December 27, 2012, Carman Jason Trickler was issued discipline in the form of a 30 Day Level S Record Suspension and a three (3) year probation for alleged failure to inspect the area to the rear of the vehicle and alleged negligence in reporting an incident on November 3, 2012.**
- 2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman Jason Trickler, of all reference of the discipline assessed.”**

**FINDINGS:**

**The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute were given due notice of hearing thereon.**

The Claimant was assigned as a Carman at the Carrier's Alliance Car Facility in Alliance, Nebraska. The Claimant was assessed a 30-day record suspension with a three-year probationary period following a formal Investigation in connection with the following:

**“ . . . your alleged failure to inspect the area to the rear of the vehicle to ensure that no obstruction was in the path of movement and negligence in reporting the incident to the proper manager on November 3, 2012, at approximately 0500 while employed as a Carman at the Alliance Car Facility. The date BNSF received first knowledge of this alleged violation is November 05, 2012.”**

The underlying facts are that on November 5, 2012, the Claimant was working as part of a two-man utility crew with Carman Justin McGowan. The evidence of record indicates that at approximately 5:00 A.M., the Claimant was operating a company truck with Carman McGowan as a passenger, when the Claimant pulled across a crossing, abruptly stopped and began backing up about ten to 15 feet. Both the Claimant and Carman McGowan testified that while backing up, they heard a thump or felt a bump and that when they exited the truck to inspect the area, they saw an orange cone next to a blue flag pole that was not upright. There was video presented at the Investigation showing a company truck backing up and making an abrupt stop and the driver and passenger exiting the truck and inspecting the rear of the vehicle and the blue flag stand lying down on the ground. Video was also presented showing the blue flag stand in an upright position several hours prior to the video showing the truck backing up.

While the Organization took the position that the videos do not establish that the truck involved in the video was being operated by the Claimant or that the truck actually hit the blue flag pole, the Board finds that the record evidence, while not totally conclusive, is of a substantial and credible nature to support the Carrier's determination that the truck was indeed the truck being operated by the Claimant and that the truck did hit the blue flag pole.

The evidence of record, including the Claimant's own testimony, clearly establishes that the Claimant violated Mechanical Safety Rule S-12.8, which requires that prior to backing up, the area to the rear must be inspected to insure a clear path

and that someone, in this case Carman McGowan, should have been positioned near the back of the vehicle to guide the movement. At the formal Investigation, the Claimant testified that he was aware of the requirements of the Rule, but he failed to stop the vehicle in order to allow Carman McGowan to get out of the truck and protect the movement. The Board finds, therefore, that the Carrier has proven that portion of the charge relative to the Claimant's failure to inspect the area to the rear of the vehicle.

Relative to the charge that the Claimant was negligent for failing to report the incident to the proper Manager, the Board notes that there is no dispute that neither the Claimant nor Carman McGowan reported that they had knocked down the blue flag pole. The Claimant testified that when he exited the truck with Carman McGowan after feeling a bump, he observed that the blue flag pole was lying on the ground and also observed an orange cone next to the flag. The Claimant testified that he believed the truck had only hit the cone and that the blue flag pole had been previously hit by another vehicle or piece of equipment. Because there was no damage to the cone or the truck, the Claimant did not think that he was required to report the incident. While the Claimant may have demonstrated poor judgment in not realizing that the truck may have also hit the blue flag pole, the Board does not find that the Claimant willfully attempted to cover up this incident by not reporting it to the appropriate management Official. Based on the particular facts in this case, the Board finds that the Carrier's determination that the Claimant was "negligent" in not reporting the incident cannot be upheld.

Relative to the discipline assessed, the Carrier notes that the assessment of a 30-day record suspension with a three-year probationary period was warranted and was consistent with the guidelines for "serious violations" as set forth in its Policy for Employee Performance and Accountability (PEPA). The Board finds that the Claimant's failure to follow the mandates of Mechanical Safety Rule S-12.8 was reckless and resulted in damage to the Carrier's equipment. Under such circumstances, the Board finds no reason to disturb the discipline assessed.

### AWARD

Claim denied.

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

**Dated at Chicago, Illinois, this 25th day of November 2014.**