

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14093
Docket No. 13967
14-2-NRAB-00002-130017**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

- “1. That in violation of the governing Agreement, Rule 40 in particular, the BNSF Railway Company arbitrarily and unjustly disciplined Kansas City, Kansas, Mechanical Department Electrician Bob D. Bailey as a result of an unfair investigation conducted on May 4, 2012. Electrician Bailey was assessed a Level S 30 Day Record Suspension with a Three (3) Year Review Period that commenced on April 1, 2012.**
- 2. That accordingly, and as a result of the arbitrary and unjust discipline assessed Electrician Bob D. Bailey, the BNSF Railway Company be ordered to remove all record of the discipline assessed from Electrician Bob D. Bailey’s personal record.”**

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.

Following a formal Investigation into the matter conducted on May 4, 2012, the Claimant was issued the Level S 30-day record suspension at issue here after the Carrier found him responsible for his second violation of a BNSF Safety Rule by unsafe operation of his Company vehicle on April 1, 2012. The matter was grieved by the Organization on the Claimant's behalf, discussed in claim handling without resolution, and following conferencing, was advanced to the Board for final disposition. For the reasons stated below, the Board finds that the discipline was for just cause and accordingly denies the claim.

According to the record before us, Claimant Bailey had been asked by his Lead Man on April 1, 2012 to take a Company truck from the shop at Argentine Yard and drive it to the West Hump Fuel Pad, which was out of service at the time. He parked the vehicle adjacent to five yellow barrier poles, their height appearing to be approximately level with the top of the truck tires. In the process he made contact with one of the poles, denting and leaving scrape marks on the right rear panel of the truck. The Claimant states that he had been unaware of the vehicle's contact with the pole until somewhat later in the day when he attempted to again reposition the vehicle to free up the driveway and saw the damage, immediately reporting the matter to his Supervisor.

The Claimant, with six and one-half years of seniority on the Kansas City Shop extension seniority roster at the time, maintains that he was unable to see the poles from his passenger side mirror. He further contends that he believes the Carrier's judgment in holding him accountable was "subjective," because no BNSF Official actually observed the accident. Given that there were no eyewitnesses, he argues, how can the Carrier assume negligence? Additionally, he indicates that the vehicle he was required to use on this occasion was one that he drove infrequently; and that given the nature of the work, dings and dents are bound to be incurred on work trucks. At the same time, he accepts full responsibility for the minor damage and the record establishes that he responsibly reported the accident as soon as he became aware of it. Given the minor damage involved and the extenuating circumstances involved in repositioning the truck, the Organization argues that the Carrier has not offered substantial evidence to support its conclusions, and that, in any event, the discipline imposed was excessive.

One of the most critical fixtures of our system of industrial relations, as the parties are aware, is its reliance on first-hand evidence, more highly probative than hearsay or circumstantial evidence. But here, just as in even criminal justice, while eyewitness evidence would have been more highly probative, it was not required. Nobody, apparently, observed the Claimant hit a pole, but the Carrier's case in this instance is well-shaped by physical evidence, its re-enactment and a comprehensive evaluation of facts that pretty much speak for themselves.

The record does suggest that, as the Organization points out, (1) the West Hump Fuel Pad site was a busy and noisy construction area, (2) several other trucks were parked in the vicinity, and (3) the Carrier should have given account to the Claimant's being forced to maneuver a large truck in a confined area. At the same time, based upon our review of the record in its entirety, the Board concludes that the Carrier gave consideration to the above facts, and additionally to the fact that the Claimant's service record reflected a prior Level-S serious discipline within the previous three years for an earlier Safety Rule violation. Accordingly, at the time this matter arose, he was operating within a three-year probation period under the Carrier's established guidelines.

That earlier record suspension, together with the substantial credible evidence supporting the Carrier's conclusion that with greater awareness of his situation the Claimant could have avoided this accident, forces the conclusion that the discipline assessed comported with BNSF's Policy for Employee Performance and Accountability (PEPA). Because a violation of Rule S-1.3.3, Alert and Attentive, has been demonstrated, the claim will be denied.

AWARD

Claim denied.

ORDER

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

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 17th day of December 2014.