

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14138  
Docket No. 14007  
16-2-NRAB-00002-140040**

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 Agreement dated February 1, 2006, in particular Appendix J-2, when on March 18, 2013, Carman Loman Lyle was issued discipline in the form of a 30-Day Level S Record Suspension and a one year review period for causing slight damage to the side mirror of a freight car mover when he struck a pole mounted hose reel on February 5, 2013.**
- 2. That accordingly, the Carrier be ordered to expunge the personal record of the Claimant, Carman John Coelyn (sic), of all reference of the discipline assessed and honor the provisions of Appendix J-2 Part 2, Section 1-Alternative Handling Agreement.”**

**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 issued a 30-day Level S record suspension with a one-year review period following a formal Investigation in connection with the following:

“... your alleged failure to operate the Pasco Mechanical Car Mover in a careful and safe manner, ensuring the path of travel was clear while returning the Car Mover after pulling railcars in on 2511 track at the Pasco Repair Facility at approximately 1905 hours while working as a Carman at the Pasco Repair Track Facility.”

At the formal Investigation, Assistant General Foreman Long testified relative to his Investigation of an incident involving the Claimant's operation of the car mover while moving from the shop to the rip track. Mr. Long testified that the mirror on the left side of the car mover was damaged when it struck a hose reel hanging on a pole while the Claimant was operating between the two poles. A reenactment of the incident was done and it was determined that the width of the car mover was 11 feet and that the opening between the poles was 16 feet; there were also alternate routes the Claimant could have travelled if he so chose. The Assistant General Foreman concluded that the Claimant was in violation of Mechanical Safety Rule S-12.1.1 – Operating Motor Vehicles which requires that motor vehicles be operated in a careful and safe manner and also Mechanical Safety Rule S-14.3, which requires that when moving cars, the path must be clear.

When the Claimant testified at the Investigation, he acknowledged that it was “my fault” for damage to the mirror and explained that he “made a mistake and didn't see the hose reel” while traveling between the poles and also admitted that “I guess that's called being uncareful. . .” in violation of Safety Rule S-12.1.1. The Claimant initially contended that he had a clear path but upon further questioning stated that since he did not see the hose reel, he was not compliant with Safety Rule S-14.3. The Board finds that the evidence is clear and substantial that the Carrier sustained its burden of proving the Claimant's guilt of the charged offense.

While the Organization does not seriously dispute that the Claimant has some culpability for the incident, it has taken the position that the Claimant should have

been handled under the Alternate Handling Agreement found in Appendix J-2 of the Agreement which provides an option to the standard discipline policy in that it provides for training and other non-disciplinary measures. The Organization states that the Claimant's actions were not intentional and that the Carrier improperly denied the Claimant the ability to utilize the Alternate Handling Agreement.

Initially, the Carrier notes that the Alternate Handling Agreement has its own Dispute Resolution provision and that this Board lacks jurisdiction to determine whether alternate handling was appropriate, citing an on-property Award in support thereof. Alternatively, the Carrier argues that the charged offense involved a violation of the Mechanical Department's Seven Safety Absolutes and is considered a serious offense under the Carrier's Policy for Performance and Accountability (PEPA), which made the Claimant ineligible for alternate handling, citing Award No. 9 of PLB 7491 involving a similar dispute between the parties at bar.

The Board finds that based on the language of the Alternate Handling Agreement, there is no basis, either jurisdictionally or otherwise, to Rule that the Claimant was entitled to utilize the provisions of the Alternate Handling Agreement as opposed to proceeding under the normal disciplinary process as was done in this case.

Relative to the discipline assessed herein, the Carrier notes that a violation of any of the Mechanical Department's Seven Safety Absolutes is considered a serious offense under its PEPA and that the discipline of a 30-day record suspension was in accordance with such Policy. The Board finds that the discipline assessed in this case was not arbitrary or capricious and will not be disturbed by the Board.

**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 20th day of December 2016.**