

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14173
Docket No. 14056
16-2-NRAB-00002-150020**

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

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

STATEMENT OF CLAIM:

- “1. On behalf of Alliance, Nebraska Carman Jay Blackwell, employee No. XXXX, we are appealing his dismissal from service and we are claiming eight (8) hours pay at the pro-rata rate for all workdays commencing March 17, 2014 and continuing until he is returned to active service as requested in Local Chairman Chancellor’s initial claim and appeal. In addition, we also claim the following:**
- 1. returned to service with seniority rights unimpaired;**
 - 2. made whole for all vacation rights;**
 - 3. made whole for all health, welfare and insurance benefits and doctor expenses for him and his family during the time he was held out of service;**
 - 4. made whole for pension benefits including Railroad Retirement and unemployment insurance;**
 - 5. made whole for any other benefits he would have earned during the time he was held out of service;**
 - 6. made whole for all wages, overtime he could have worked, lump sum payments, general wage increases and cost-of-living adjustments;**
 - 7. removal of all record of this unjust discipline from personal records.”**

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.

At the time of the events leading to this dispute, Claimant Jay Blackwell was working as a Carman Inspector for the Carrier in Alliance, Nebraska. At about 6:00 P.M. on February 8, 2014, the Claimant was operating an off-track vehicle belonging to the Carrier in the performance of his duties. At that time the Claimant drove the vehicle across two tracks in the South Yard at Alliance, whereupon his vehicle struck or was struck by a locomotive.

Carrier S-12.1.2 provides as follows concerning when an employee is crossing tracks while operating a motor vehicle:

“When crossing tracks with a motor vehicle or off-track equipment at non-public crossing locations:

- Approach as close to a right angle to the track as practical to allow for optimal viewing of potential approaching movements.
- Stop before crossing track(s), unless the vehicle or off-track equipment is foul of a previously crossed track.
- Look for trains, engines, rail cars and on-track equipment movements approaching from either direction.
- Yield to trains, engines, rail cars and on-track equipment before proceeding across the track(s).”

The collision of the vehicle operated by the Claimant with the locomotive was recorded by video equipment located on the locomotive as well as by a yard camera. Having viewed the video recordings and looked into the circumstances, the Carrier on February 11, 2014 notified the Claimant to attend an Investigation on February 19, 2014 to determine his responsibility for failing to operate in a safe and careful manner in accordance with the Carrier's rules on February 8, 2014. By agreement, that Investigation eventually took place on February 28, 2014, and was attended by the Claimant and the Organization, among others. On March 17, 2014, a General Foreman for the Carrier based in Denver, Colorado, who presided at the Investigation, informed the Claimant by letter that the Investigation had determined "that you were in violation of MSR S-12.1 Operation of Motor Vehicles" at the time of the incident on February 8, 2014. (Carrier Exhibit No. 1). Therefore, the letter of March 17, 2014 advised the Claimant that he was dismissed from service effective that date. The Organization thereafter filed the instant claim.

The Investigation disclosed, based on the video recordings of the incident that the vehicle operated by the Claimant on February 8, 2014 did not stop in order to enable the Claimant to look for traffic approaching on the tracks as required by the Rule, before proceeding across the tracks and into the path of the locomotive.

The Claimant and the Organization maintained that conditions were snowy on that date, and that the vehicle slid across the tracks as the Claimant attempted to stop. However, the video recordings and observations by Carrier personnel revealed no evidence of the vehicle having attempted to stop or of skid marks from the vehicle sliding across the tracks.

When asked at the Investigation whether he was operating the vehicle too fast for the conditions, the Claimant answered that he thought he was travelling at only about one-half mile per hour. The Claimant maintained that, despite that very cautious rate of speed, the vehicle slid across two sets of tracks and did not stop until it collided with the locomotive.

It is well understood that Carmen performs in a very safety-sensitive environment, making safety rules of the utmost importance. This is particularly, and obviously, the case when an employee is operating motorized equipment adjacent to or crossing tracks. In a matter like the instant claim, where a potentially life-threatening accident has occurred, and the Claimant offers testimony that contradicts other evidence concerning how the accident occurred, it

is the province of the Investigative Hearing Officer to resolve credibility issues and determine the facts. This proposition is established in numerous prior awards. See, Public Law Board 7572, Award No. 17; and Public Law Board 7052, Award No. 25.

Under all the circumstances, the Board concludes that ample evidence was presented at the Investigation to support the conclusion of the Hearing Officer that the Claimant violated MSR S-12.1.2. There also is ample evidence that the Rule violation by the Claimant resulted in a collision that could have been very serious and indeed caused the loss of life. Under these circumstances, the Hearing Officer had a clearly sufficient basis to conclude that the facts warranted the Claimant's dismissal from service. The Board finds no basis in the evidence to second-guess or disturb that conclusion.

Accordingly, the Board finds that the Carrier did not violate the Agreement in conducting the Investigation of the Claimant's violation of Rule S-12.1.2 or in dismissing him from service for violating that Rule. Therefore, the Claim must 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 20th day of December 2016.