

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 14175
Docket No. 14058
16-2-NRAB-00002-150022

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. That the Burlington Northern Santa Fe Railroad Company violated the terms of our controlling Agreement, when on March 24, 2014, the Carrier improperly issued discipline to Alliance, Nebraska Carman Adam Krebs, , as a result of an investigation held on March 11, 2014.
2. That, accordingly, the Burlington Northern Santa Fe Railroad Company shall be required to remove the Level S – 30 day record suspension with a three (3) year review period that commences on March 24, 2014, issued by letter dated March 24, 2014, and all other record of this unjust and improper discipline shall be expunged from his 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.

At the time of the events leading to this dispute, Claimant Adam Krebs was working as a Carman Inspector for the Carrier at the Alliance, Nebraska train yard and repair track facility. At about 6:13 P.M. on February 8, 2014, the Claimant was operating a Carrier vehicle in the South Yard of the Alliance facility. At that time an Assistant General Foreman for the Carrier observed the Claimant back up the Carrier vehicle that the Claimant was operating out of one track and, without stopping, across another track. A video of this incident was recorded on a Yard camera.

Believing that the Claimant's operation of the vehicle in this fashion may have violated the Carrier's safety Rules, the Assistant General Foreman instructed the Claimant to provide a written statement about what had occurred. The Claimant submitted a statement on February 9, 2014 saying simply, "Heard a call on the radio, was on the south end of 205 and went to assist Carman." Also on February 9, 2014, the Assistant General Foreman gave the Claimant a Mechanical Operations Tests (OPT) Form GS11186, stating that the Claimant was charged with a safety violation of the Carrier's Motor Vehicle Operations rules, and the Claimant marked and signed that document indicating that he "Agreed".

On February 14, 2014, the Carrier advised the Claimant that an Investigation was scheduled for February 19, 2014 "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to operate BNSF vehicle #22683 in a careful and safe manner when you failed to stop before crossing the tracks on February 8, 2014, at approximately 6:13 P.M., while employed as a Carman in the South Yard at Alliance, NE."

By Agreement, the investigation was rescheduled and held on March 11, 2014, with the Claimant and the Organization present. Thereafter, on March 24, 2014, the Carrier sent the Claimant a letter stating that it had been determined, "through testimony and exhibits brought forth during the investigation, that you were in violation of MSR 12.1.2 Crossing Tracks." The letter said that the Claimant therefore was being assessed "a Level S 30 Day Record Suspension" and a "Three (3) Year Review Period" commencing the date of that letter. The Organization appealed the discipline on April 8, 2014, contending that the discipline assessed to the Claimant was arbitrary and capricious and without just cause. The appeal asserted that, at the time of the incident on February 8, 2014, the Claimant believed that another Carman had been struck by a locomotive and may have been injured.

Therefore, according to the Organization's appeal, the Claimant "believed he was operating under Rule S-28.2.1 [Care for Injured] which states: 'When passenger or employees are injured do everything possible to care for them.' In addition, the appeal asserted that the Claimant "clearly braked to a stop before crossing the tracks."

Carrier Rule S-12.1.2, the rule that the Claimant is charged with violating, provides as follows concerning when an employee crosses 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)."**

At the Investigation into whether the Claimant violated this Rule on February 8, 2014, the Claimant acknowledged that, shortly after the incident occurred, he signed the OPT document indicating that he agreed with the charge that he had violated the Rule. The Claimant also acknowledged that the written statement he then prepared, shortly after the incident, said nothing about his having been responding to an emergency when he backed across the tracks.

At the Investigation, however, the Claimant testified that, when he reversed his vehicle across the tracks on February 8, he had just heard a radio communication indicating that an accident had occurred involving another Carman. The Claimant stated that he was reacting to that radio communication. After further questioning, though, the Claimant acknowledged that he did not know if the other Carman had been injured, and that there was no declared emergency.

At the Investigation, the Claimant also testified that he believed he had briefly stopped his vehicle before continuing in reverse across the tracks. However, the video from the Yard Camera indicated that the vehicle did not stop before crossing the tracks and, at most, that the Claimant may have tapped the brakes while continuing, without a stop, across the track.

In the opinion of the Board, there was ample evidence produced at the investigation from which the Carrier could conclude that the Claimant did not fully comply with MSR S-12.1.2 when he backed the Carrier's vehicle across the tracks on February 8, 2014. It should go without saying that an employee's compliance with such safety rules is critical, given the potential for serious injury to employees and others and damage to expensive equipment when operating motor vehicles in a rail yard. See, e.g., Public Law Board 7537, Award No. 17 (observing that employees "must realize that the Railroad Industry is one, as we have stated in the past, where strict adherence to all safety rules must be meticulously followed").

At the same time, it should be recognized that, at the time of this incident, there had been a radio report of an accident involving another Carman on the Carrier's property, to which the Claimant reasonably thought he should respond, and that the Claimant seems to have at least applied his brakes, although without coming to a stop, before backing the vehicle across the track. In addition, the record indicates that at the time of the February 8, 2014 incident the Claimant was a six-year employee of the Carrier with a generally good work record.

Consequently, under all the circumstances, it is the conclusion of this Board that sufficient evidence justified the Carrier in assessing the Claimant a 30-day record suspension for a serious violation under the Policy for Employee Performance Accountability (PEPA) (Carrier Exhibit No. 5), but that the 36-month review period assessed by the Carrier should be reduced to a 12-month review period under Paragraph II.A. of the PEPA.

Accordingly, the Board finds that the Carrier did not violate the Agreement in assessing the Claimant a 30-day record suspension, but that the three-year review period assessed by the Carrier must be reduced to a one-year review period.

Claim allowed in part and denied in part, as specified above.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

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