

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43489
Docket No. SG-44301
19-3-NRAB-00003-170390**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of J.E. Gray, for any mention of this matter to be removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Standard Formal Reprimand with a one-year review period to the Claimant, without providing him a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on October 27, 2015. Carrier’s File No. 35-16-0021. General Chairman’s File No. 15-058-BNSF-129-S. BRS File Case No. 15573-BNSF.”

FINDINGS:

The Third 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 dispute, the Claimant was assigned to a Signal Maintainer position. On October 16, 2015, the Claimant was given notice of an Investigation in connection with the following charge:

“An investigation has been scheduled...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged carelessness and unsafe operation of a Company vehicle when you struck a fire hydrant at or near Norris, OK, Creek Subdivision, on October 14, 2015 which resulted in damage to the Company vehicle and the fire hydrant.”

After a formal Investigation on October 27, 2015, the Claimant was found to be in violation of MWSR 12.1 Operation of Motor Vehicles, MWSR 1.2.3 Alert and Attentive and VPR 8.0 Vehicle Responsibilities and Usage and was assessed a Standard Formal Reprimand and a One Year Review Period.

On October 14, 2015, the Claimant was operating a trencher near the Norris Control Point on the Carrier's mainline when the machine that he was operating ran low on hydraulic fluid. The Claimant drove the Carrier's vehicle 28846 to retrieve two buckets of hydraulic fluid, which weighed approximately 70 pounds. While driving the Carrier's truck through tall grass to reach the trencher, the Claimant struck a fire hydrant, causing damage to the front bumper of the vehicle and to the fire hydrant. The Claimant reported the incident to his foreman and to his supervisor. The Claimant's supervisor came to the scene to inspect the damage.

The Carrier contends the discipline was appropriate, because the Claimant was in control of the vehicle and made the decision to drive it through tall grass without first checking to see if there were any hidden obstacles or hazards in his path. The Carrier contends that the Claimant failed to operate a vehicle in a safe and careful manner and was appropriately disciplined.

The Organization contends that the Claimant was attentive and was operating the vehicle in a safe and careful manner and that the Carrier has failed to prove

otherwise. The Organization contends that the Claimant's supervisor followed the same route through the grass when he came to inspect the incident. The Organization contends that the trained professional who reviewed the DriveCam video saw no wrongdoing, as the video was not forwarded to the Carrier. Therefore, there is no video evidence to support the Carrier's case. The Organization contends that the land in question is owned by the Carrier and the fire hydrant was not properly maintained, which prevented the Claimant from seeing it.

In order to prove that the Claimant violated MWSR 12.1, Operation of Motor Vehicles, MWSR 1.2.3, Alert and Attentive, and VPR 8.0, Vehicle Responsibilities and Usage, the Carrier must prove that the Claimant was not alert and attentive or failed to operate the Carrier's vehicle in a careful and safe manner. Based upon the record, the Board finds that the Carrier failed to satisfy its burden of proof.

The Board agrees that the Carrier has shown with substantial evidence that while the Claimant was operating its vehicle on October 14, 2015, he struck a fire hydrant, causing minor damage to the truck's bumper and knocking the fire hydrant off its base. However, the Board finds that the factual record fails to show that Claimant was not alert and attentive when performing his duties, or that he failed to operate the vehicle in a careful and safe manner. An independent source reviewed the DriveCam video which preceded the accident and found no fault with the Claimant's driving. The unrebutted testimony was that the Claimant was alert and not distracted. There is clear evidence that the grasses around the fire hydrant were very tall and not maintained as required by law. To find the Claimant at fault on this record, this Board would have to speculate to an unreasonable degree, which it is unwilling to do. The Claim must be sustained.

AWARD

Claim sustained.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 1st day of March 2019.