

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43691
Docket No. MW-45096
19-3-NRAB-00003-180601**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. C. Burns by letter dated March 30, 2017 for alleged violation of MWOR 1.1.2 and MWSR 12.14.6 in connection with his conduct leading to the boom truck striking a railroad bridge on January 24, 2017 was on the basis of "unproven charges, arbitrary and excessive and in violation the Agreement (System File C-17-D070-6/10-17-0192 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, shall be reinstated to service with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits. The Claimant shall be made whole for all financial losses as a result of the violation, including compensation for: 1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service; 3) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held**

during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the Claimant not been removed from service; 4) health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly removed from service. ***”

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.

Claimant Burns, a truck driver, struck an improperly marked overpass causing extensive damage to his truck. The Organization took the position that the improperly marked bridge was the cause of the collision, while the Carrier maintained the fault lies with the Claimant as driver. The Organization notes the bridge was not marked with proper signage in compliance with applicable law, and but for this lapse in signage, the accident would never have happened.

The Organization argues that when a bridge is not marked, it is appropriate for a driver to assume it is not a low clearance bridge, that is, of a height less than 13’8”. Though there was a sign before reaching the bridge warning of low clearance, there was no signage at or on the bridge itself. The Claimant admits he passed the one warning sign without noticing it. The statute requires the warning of low clearance be on the bridge itself: “Where the clearance is less than the legal maximum vehicle height, the W12-2 sign with a supplemental distance plaque should be placed at the nearest intersecting road or wide point in the road at which a vehicle can detour or turn around.”

The Carrier notes the Claimant had previously operated in the area and has admitted colliding with the bridge. In its assessment, the signage in the area did not alter the Claimant's fundamental responsibility not to take his truck into places where it will not fit. It notes that prior to arriving at the bridge, there is a roadway sign that clearly indicates the bridge clearance is 12' 8." The Claimant plainly failed to see or assimilate the information in this sign. It views the incident as serious in nature and argues the discipline was warranted.

We agree. Though clearly the signage in the area did not meet legal standards, the Claimant admittedly passed a sign warning that the bridge was low clearance. He also admitted he knew that his truck was 13'6" tall, yet did not slow down to ascertain whether it would fit under a visibly low bridge.

The Carrier is not abusing discretion or being unreasonable in expecting its drivers to be vigilant. Road conditions can vary, signs can be knocked down and bridges can look smaller or larger than they actually are due to lighting or ambient visual effects. These variations do not absolve the driver from being alert and aware. Drivers operate their vehicles in an often imperfect world. This does not mean they can displace responsibility for driving where the truck can fit. The Carrier has provided substantial evidence of inattentiveness. The Claimant passed a warning sign and failed to visually appraise the relative height of the bridge before going under it. The Carrier's burden has been met.

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 Third Division

Dated at Chicago, Illinois, this 18th day of June 2019.