

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44254
Docket No. MW-45681
20-3-NRAB-00003-190654**

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

**(Brotherhood of Maintenance of Way Employees Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. R. Inglis, by letter dated May 22, 2018, for alleged violation of MWOR 1 .1.2 Alert and Attentive, MWOR I .20 Alert to Train Movement and MWOR 1.6 Conduct in connection with his alleged failure to be alert and attentive while operating Weston section truck (24074) at approximately 0650 hours on April 6, 2018 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-18-D070-12/10-18-0252 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Inglis shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated ‘... for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health & welfare and dental insurance, and any and all other benefits to which entitled ***’.”**

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 approximately 0650 hours on the day in question, the Claimant approached a grade crossing, turned right, and proceeded over the tracks. As the truck reached the middle of the grade crossing, a passenger in the vehicle yelled "Train!" prompting the Claimant to 'floor' the gas pedal. The truck gained enough momentum to keep the train from striking the passenger side of the main cab. Instead, the train rammed the bed of the truck at a speed of 53 miles per hour, spinning it around and throwing it off the tracks into the right-of-way. In the Carrier's assessment, the conclusion that the Claimant failed to be alert is glaring and unavoidable. He admitted he did not stop at the stop sign.

Though the evidence of record shows that the stop sign was 150 to 200 feet away from the tracks, the Claimant has admitted he crossed the tracks without stopping. The evidence of record established that a train was approaching when the Claimant crossed the tracks. Had he been alert and observant, he would have checked to make sure the tracks were clear. It is obvious that he failed to do so. We do not agree that speculation and innuendo are descriptive of the evidence in this case.

The Organization argues that the Claimant's 20 years of service should serve as a mitigating circumstance. We are fully aware of the weight of long service as a mitigating circumstance, and embrace the rationale that such service must be weighed against the nature of the offense at issue. The Carrier couches its substantial doubts about the Claimant's competency to return to work in terms of his violation of three rules regarding alertness. We must also take into account the crucial nature of awareness and alertness in the railroad industry. We cannot fault the Carrier for

its deep concern about a crossing a railroad in front on an oncoming train traveling at 53 mph. We do not find that the Carrier has abused its discretion or otherwise violated its Agreement with the Organization in this case.

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 23rd day of October 2020.