

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 63, (Case No. 63)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing April 4, 2010, when Claimant, Steven N. Radford (1323807), was dismissed by letter dated September 14, 2010, concerning him disconnecting the Hy-Rail Limits Compliance System in company vehicle and use of the vehicle and fuel card for personal reasons off territory on April 4, 2010. The Carrier alleged violation of MOWOR 1.19 Care of Property and MOWSR S-12.1.1 Operating of Motor Vehicles - General Requirements.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this dismissal, and reinstate with all seniority, vacation, all rights unimpaired and pay for all wage loss commencing April 4, 2010, continuing forward and/or otherwise made whole."**
(Carrier File No. 14-10-0171) (Organization File No. 190-13D2-104.CLM)

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On April 26, 2010, Claimant was directed to attend a formal Investigation on May 5, 2010, which was mutually postponed until August 18, 2010, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility,

if any, in connection with your alleged disconnecting of the Hy-Rail Limits Compliance System in company vehicle 22452 and use of the vehicle and fuel card for personal reasons off territory on April 4, 2010 at approximately 2345 hours at Tehachapi, California.

This investigation will determine possible violation of MOWOR 1.19 Care of Property and MOWSR S-12.1.1 Operation of Motor Vehicles - General Requirements."

On September 14, 2010, Claimant was notified that he had been found guilty as charged and he was dismissed.

It is the Organization's position that the Claimant is good employee with 12 years of service who was having financial difficulties because of a tumultuous divorce proceeding wherein his wife had taken his children away from him. On the date of the incident the Claimant wanted to go home to see his kids and attempt to work things out with his spouse, but unfortunately he did not have sufficient funds so he chose to use a company vehicle and fuel card to accomplish that. It argued that the Claimant admitted he made a mistake and accepted responsibility for that error, however, it points out that faced with the potential loss of his children, Claimant allowed his emotions to take control over his normal and responsible work ethic. Lastly, it stated that even if the Carrier could produce evidence to support their charges, which it did not, the discipline is excessive in proportion to the allegations. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that on April 4, 2010, the Claimant disconnected the global positioning system device (HLCS) that the Carrier installed in its vehicle 22452 to both verify its position as well as provide an additional safety measure for its occupants. Additionally, it argued that the record verifies that the Claimant admitted he took that vehicle home and fueled it for personal use after receiving explicit instruction that company vehicles were not to be driven home. It closed by asking that the discipline not be disturbed.

The Board has thoroughly reviewed the transcript and record of evidence and has determined that the Investigation was held in compliance with Rule 13(a) the Discipline Rule and Appendix No. 11.

The facts indicate that the Claimant was alleged to have violated the following Rules which state in pertinent part:

"MOWOR 1.19 Care of Property

Employees are responsible for properly using and caring for railroad

property. Employees must return property when the proper authority requests them to do so. Employees must not use railroad property for their personal use.

S-12.1 Operation of Motor Vehicles

S-12.1.1 General Requirements

Every company vehicle driver must:

*** * * * ***

- * Comply with all rules and procedures listed in the BNSF Company Vehicle Policy and Procedure Manual for operating company or temporary replacement vehicles.**

*** * * * ***

The record substantiates that the Claimant admitted several times during the Hearing that he used a company vehicle to return home and fueled it for his personal use after receiving directives that those vehicles were not to be driven home. For example, on pages 22 and 23 of the Transcript, he was questioned as follows:

"Adam Richardson: And there's an alleged, allegedly you disconnected a Hy-Rail Limits Compliance System, or HLCS, in vehicle 22452 on April 4th. Did you, in fact, disconnect the HLCS System?"

Steve Radford: Yes, I did.

Adam Richardson: Okay, on April 4th, there is also an alleged that you used the BNSF credit card for personal reasons at Tehachapi. Did you use the BNSF credit card at Tehachapi?

Steve Radford: I did take a company vehicle and used the credit card in Tehachapi.

Adam Richardson: And why were you at Tehachapi?

Steve Radford: I had to go home for personal reasons.

Adam Richardson: Okay, so you decided to take the vehicle home for personal reasons?

Steve Radford: Correct.

Adam Richardson: Is, do you, is there, has anyone ever explained to you what the vehicle policy is?

Steve Radford: Paul Martinez just told me that I wasn't allowed to take the vehicle home.

Adam Richardson: Okay, and you chose to take it home?

Steve Radford: Yes.

Adam Richardson: Knowing that it was against the policy and his expectations?

Steve Radford: Yes." (*Underlining Board's emphasis*)

The questioning of the Claimant continued on page 24 as follows:

"Gary Marquart: Okay, and so you needed to go home on that particular day?

Steve Radford: Um, I wouldn't say it was a dire emergency. I chose to go home, I didn't need to go home." (*Underlining Board's emphasis*)

As previously stated Claimant admitted he disconnected the Carrier's global tracking system on a company Hy-Rail vehicle and fueled it for his personal use after being specifically told not to take company vehicles home. It is clear that substantial evidence was adduced at the Investigation that the Claimant was guilty as charged.

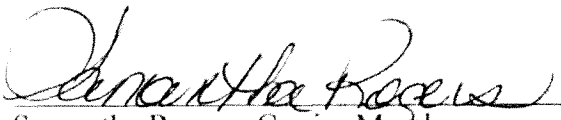
The only issue remaining is whether the discipline was appropriate. Despite the Organization's vigorous and able defense of the Claimant it could not overcome the fact that Claimant understood when he took the company vehicle it was against Carrier Rules and instructions which was emphasized by his testimony that he purposely disconnected the Carrier's tracking system so that it would not know that its truck was being used. Claimant further testified that no emergency existed and he did not need to go home. Additionally, the record indicates that at the time of the instant dispute Claimant had a prior Level S record suspension approximately nine months before. Those facts coupled with the Carrier's Policy for Employee Performance Accountability (PEPA) which states that two serious rule violations within 12 months are grounds for dismissal means the discipline exercised by the Carrier was in accordance with its PEPA, therefore, the Board finds and holds the discipline will not be rescinded because it was not arbitrary, excessive or capricious.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member


Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

Award Date: 10-12-11