

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 72, (Case No. 72)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES 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 August 19, 2010, when Claimant, David J. Devitt (1343383), was Dismissed for failure to operate a company vehicle in a safe and efficient manner which resulted in a collision with a utility pole and damage to the vehicle on August 19, 2010. The Carrier alleged violation of MOWOR 12.1.1.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated with seniority, vacation, all rights unimpaired and wage loss commencing when Claimant withheld from service and continuing forward and/or otherwise made whole.
(Carrier File No. 14-10-0189) (Organization File No. 120-13C2-1051.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 August 24, 2010, Claimant was directed to attend a formal Investigation on August 31, 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 failure to operate company vehicle 18533 in a safe and efficient manner which resulted in damage to the vehicle from a collision with utility pole. The alleged violation took place on August 19, 2010 at

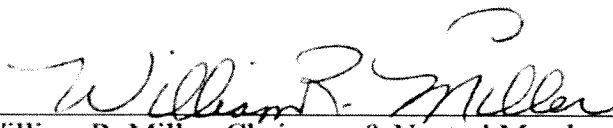
approximately 0825."

On September 28, 2010, Claimant was notified that he had been found guilty as charged and was dismissed from service.

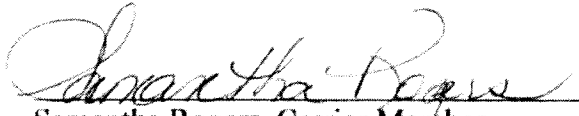
This is the second in a series of two dismissal cases before the Board involving the same Claimant. The skillful arguments of the respective parties need not be reiterated in this instance as the question of Claimant's alleged guilt has become academic because in Award No. 71 this Board found that Carrier's decision to dismiss Claimant was appropriate. Therefore, the Board finds and holds that the dismissal in Award No. 71 cannot be overridden and the issue raised in the instant case is now moot, thus, the claim is dismissed. However, we would add that a review of the transcript and record substantiated that the Carrier met its burden of proof that Claimant was guilty as charged.

AWARD

Claim dismissed.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David D. Tanner, Employee Member

Award Date: 1-10-12