

PUBLIC LAW BOARD NO. 7394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY
(Former St. Louis—San Francisco Railway Co.)

Case No. 23 – Award No. 23 – Claimant: Blackledge
Carrier File No. 12-11-0010 / Organization File No. B-3268-4

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assessed Mr. Eric J. Blackledge a Level S 30-day Record Suspension with a three-year review period for his alleged failure to operate vehicle #23497 in a careful and safe manner resulting in a vehicle collision in the parking lot of the Hampton Inn on October 18, 2010 at approximately 2120 in Decatur, Texas violating Maintenance of Way Safety Rule (MWSR) 12.1.1.
2. As a consequence of the Carrier's violation referred to in part (1) above, we request that the discipline be removed from Mr. Blackledge personal file.

FINDINGS:

Public Law Board No. 7394, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Eric J. Blackledge, has been employed by the Carrier since 2005. On October 26, 2010, the Carrier instructed Claimant to attend an investigation for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged failure, on October 18, 2010, to operate vehicle #23497 in a careful and safe manner, resulting in a vehicle collision in the parking lot of the Hampton Inn in

Decatur, Texas. Following the investigation, on November 23, 2010, the Carrier, by letter, notified Claimant that he had been found guilty of the violations alleged. The Carrier assessed Claimant a Level S 30-day record suspension with a three-year review period.

The applicable Carrier Maintenance of Way Safety Rule provides, in relevant part:

S-12.1 Operation of Motor Vehicles

S-12.1.1 General Requirements

Every company vehicle driver must:

- Operate the vehicle in a careful and safe manner

The facts of this case are not in dispute. At the time of the incident, Claimant was working as Head Foreman on the Distress Gang, and had parked his vehicle, a Carrier long pickup truck, at a Hampton Inn parking lot. Claimant testified that he had to leave the hotel fairly late on the evening of the incident because he was having laptop problems and decided to go to the depot to put in his time. He stated that he had backed his truck into a parking spot and, as he pulled out, he made his turn a little too sharply. He stated that there were several cars in front of him, as well as railroad cars, and it was tight for the long pickup truck he was driving. He stated that he was focused on the vehicles in front of him, and as he pulled out he ran into the side of an Infinity G-35 parked next to him. He stated that the car had not been in the spot when he parked the truck. He admitted that he apparently did not operate the vehicle in a careful and safe manner, as he ran into the other car. Claimant testified that he immediately called Mr. Sneed and told him he had hit the other car and Mr. Sneed needed to come to the site.

Carrier Roadmaster W. Sneed testified at the investigation that on the day of the incident Claimant called him and told him that he had had an accident in the Hampton Inn parking lot. He added that Claimant told him that he had turned too sharply and hit another parked vehicle, and he was truthful and forthcoming in his account of the incident. He stated that Claimant admitted hitting the other vehicle.

Mr. Sneed proceeded to the site and examined the Carrier vehicle and the other vehicle involved in the incident. He stated that Claimant had already moved the Carrier vehicle but it looked like he had pulled out of his parking space too short and glanced the other vehicle from the side. Mr. Sneed added that both vehicles sustained damage, but did not describe the extent of the damage. Photographs entered into evidence at the investigation show what appears to be relatively minor damage to the right side of the truck bed on the Carrier vehicle, and what appear to be scrapes and possibly headlight damage on the other vehicle.

The Carrier's Policy for Employee Performance Accountability (PEPA) provides that an employee involved in a "serious" incident will be given a 30-day record suspension, or an actual suspension in certain circumstances, with a 36-month review period. A second serious incident within the review period will subject the employee to dismissal. The policy's Appendix B sets forth a "non-exhaustive" list of serious violations.

For non-serious rule violations, the PEPA provides that an employee involved in a first incident may choose alternative handling. For subsequent non-serious violations, the employee will be subject to a record suspension determined by the number of prior rule violations within a 12-month review period. The record suspensions are to be 20, 20 and 30 days respectively for second, third and fourth violations.

Claimant's personal record shows a 10-day record suspension, issued August 24, 2010, for failure to conduct himself in a respectful and courteous manner, and a Level S 30-day record suspension, with a 12-month review period, for failure to stop short of a switch, resulting in a run-through switch, issued November 18, 2008.

The Carrier states that the facts of this case are simple, as Claimant turned too sharply while exiting his parking place and struck another vehicle, causing damage to both vehicles. The Carrier points out that Claimant, during the investigation, freely admitted to causing the collision. The evidence adduced at the investigation, the Carrier asserts, also shows that Claimant could have prevented the accident by taking additional time and care, but failed to do so.

The Carrier asserts that it is clear that Claimant's guilt has been proven, as it is well established that his admission alone is sufficient to for this purpose. With respect to the penalty, the Carrier maintains that this was a serious violation and the discipline assessed was appropriate. The Carrier urges that this Board disregard the Organization's argument that the penalty is excessive. The Carrier argues that Claimant failed to operate his vehicle in a safe and careful manner and could just as easily have struck a person. For all of these reasons, the Carrier urges that the claim be denied.

The Organization states the incident occurred while Claimant attempted to navigate an oversized Carrier truck in a congested motel parking lot, at night when vision was limited. Claimant, the Organization points out, readily admitted that while pulling the truck out of the lot he turned the truck to the passenger side and came in contact with the vehicle parked next to his, and he immediately notified his supervisor of the incident.

The Organization urges that the discipline assessed against Claimant for his admitted action is severe and unwarranted, as he did not commit a serious rule violation warranting a 30-day record suspension and a three-year review period. For these reasons, the Organization concludes, the claim should be sustained.

We have carefully reviewed the record in its entirety. There is no question as to the facts of this matter: Claimant, as he admitted, struck another vehicle while pulling his Carrier pickup truck out of a parking space in a hotel lot. He readily admitted his violation, and immediately and fully informed the Carrier. He also admitted that he had violated Carrier rules by failing to operate the vehicle as safely and carefully as possible.

While Claimant is clearly guilty of the rule violation alleged, the Organization takes issue with the Carrier's decision to classify his violation as a Level S, serious offense, with a three-month review period. We must agree that this represents an unreasonable and excessive exercise of the Carrier's discretion to determine penalties.

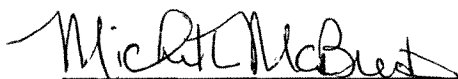
While the Carrier states that Claimant's violation was serious, it has provided no explanation for why a relatively minor, "fender-bender" type incident should be so classified. Indeed, it is difficult, under the Carrier's interpretation in this case, to imagine *any* violation of the safe vehicle operation rule that it would fail to classify as serious. Given the major implications for an employee of having a serious violation on his record—another incident within 36 months subjects him to dismissal—that sanction must be reserved for those violations which reasonably warrant it. Without condoning Claimant's conduct, this violation, quite simply, does not. We order the discipline removed from Claimant's personal record and this violation treated as a non-serious offense under the Carrier's PEPA.

AWARD

Claim sustained in accordance with Findings.



DAN NIELSEN
Neutral Member



MICHELLE MCBRIDE
Carrier Member
Carrier Member



R. C. SANDLIN
Organization Member
Organization Member

Dated this 30th day of July, 2012.