

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

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

Case No. 446 – Award No. 446 – Solis
Carrier File No. 14-12-0452
Organization File No. 130-13C2-1260

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing September 18, 2012, when Claimant, P.N. Solis (6461594), was disciplined with a Level S 30 Day Record Suspension with a 1-year review period for his alleged failure to operate a company vehicle in a safe and careful manner when the light plant trailer claimant was pulling came unhooked and ran into the back door of the company van he was driving which resulted in damage to the van and light plant while working as Foreman on August 13, 2012. The Carrier alleged violation of MOWOR 1.1 Safety, MOROWR 1.1.1 Maintaining a Safe Course, MOWRSR S-12.1 Operation of Motor Vehicles, and MOWSR S-12.13.2 Inspection.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline with seniority, vacation, all rights unimpaired and pay for all wage loss commencing September 18, 2012, continuing forward and/or otherwise made whole.

FINDINGS:

Public Law Board No. 5850, 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, P.N. Solis, was hired by the Carrier in 1964. On September 18, 2012, following an investigation, the Carrier assessed Claimant a Level S 30-day record

suspension, with a one-year review period, for failure, on August 13, 2012, to operate a motor vehicle in a careful and safe manner when the light plant he was pulling came unhooked and ran into the back door of the Carrier van he was operating. The Carrier found that Claimant had violated Maintenance of Way Operating Rules (MOWOR) 1.1 Safety and 1.1.1 Maintaining a Safe Course, and Maintenance of Way Safety Rules (MOWSR) S-12.1 Operation of Motor Vehicles and S-12.13.2 Inspection.

The applicable MOWOR provide, in relevant part:

1.1 Safety

Safety is the most important element in performing duties. Obeying the rules is essential to job safety and continued employment.

* * *

1.1.1 Maintaining a Safe Course

In case of doubt or uncertainty, take the safe course.

The applicable MOWSR provide, in relevant part:

S-12.1 Operation of Motor Vehicles

Every company vehicle driver must:

* * *

- Operate the motor vehicle in a careful and safe manner.

S-12.13.2 Inspection

Before towing trailers, inspect equipment and material loaded on the trailer, and inspect the following to make sure they are operable:

* * *

- Hitches and locking devices.

If the vehicle and trailer hitch are not compatible in size and design, or if locking devices are defective, do not tow the trailer.

On the day of the incident, August 13, 2012, Claimant was working as a Maintenance of Way Surfacing Gang Foreman. Claimant contacted Carrier Production Gang Roadmaster Eric Nelson and informed him that the light plant he had been towing had unhooked from the hitch and had struck the back door of his vehicle. Mr. Nelson traveled to the scene, in Vernon, Texas, and observed damage to the lower left side of the back door of Claimant's van. Mr. Nelson stated at the investigation that the light plant had been rented, and Mr. Nelson had purchased the ball and hitch device. He added that there was no cotter pin on the light plant unit when it was received from the leasing company. He noted that following the accident the light plant was properly chained to the bumper but was dragging on the ground rather than on the hitch. Mr. Nelson took photographs, which were entered into evidence at the hearing.

Claimant testified at the investigation that prior to the incident two employees helped him hook the trailer to the van, and they had some problems with latching it down but eventually did so. He confirmed that the leased light plant did not have a cotter key, and stated that he searched the trailer for a lock or something similar and could not find one. He stated that even the chain was not there, and there was no locking mechanism or device on the hitch, only the hitch itself. Claimant added that there were safety chains on the trailer and he used them.

Claimant explained that he because of the distance he would be traveling and that it would be at night he believed it would be safer to have a locking device, so he traveled from the west side of the depot, where the crew held its job briefings, and pulled across Main Street, apparently to where equipment was located, to look for a locking device. He stated that as he came over Main Street there was a slight drop and as his van came down it popped off, so he stopped. He added that he did not want to leave the power plant in the middle of the street, so it came with him as he stopped, rolled down the hill, and hit the back of his van.

Claimant maintained that after he coupled the trailer to his van he had checked to ensure that it was securely hitched, by making sure that the ball fit into the locking device. He stated that before moving he double-checked that the lights, wheels, safety chains and hitch were all in good order.

Claimant's personal record shows a Level S 30-day record suspension assessed in 2004 for occupying main track without authority, and an historical demerit in 1990.

The Carrier asserts that this case is not complicated, as Claimant admitted there was no locking pin in the trailer hitch and that he looked for one, unsuccessfully, before he drove off without it. The Carrier notes that Claimant was the gang's Foreman and held to a high standard for making safe decisions. The Carrier argues that Claimant was aware of the problem, and by doing nothing about it, he violated Carrier Rules.

The Carrier states that the record, including Claimant's testimony, conclusively established that Claimant had an accident when the trailer he was pulling came unhooked and collided with his vehicle when he stopped. Claimant's admissions, the Carrier asserts, are sufficient to satisfy its burden of proof. Given the proven offense and its Policy for Employee Performance Accountability, the Carrier concludes, the discipline assessed was appropriate. The Carrier urges that the claim be denied.

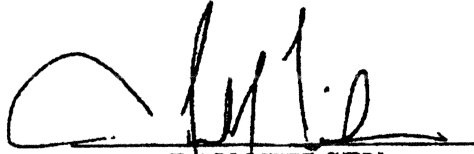
The Organization asserts that the Carrier provided no evidence of wrongdoing by Claimant. The Organization states that the Carrier found Claimant guilty because an incident occurred, not because he was responsible for it. The Organization notes that Claimant had been instructed to hook up a leased portable light plant and move it from one location to another. However, the Organization points out, the Carrier's witness acknowledged that the leased light plant did not have a cotter key to secure the hitch. The Organization also notes Claimant's testimony that before he drove he double-checked that the hitch was secure, but nevertheless drove to the tool house on the right of

way to secure something that would add a layer of safety to the materials provided by the leasing company. As he was driving, the hitch came apart, but, the Organization contends, there is no evidence that Claimant committed any Rules violations. The Organization concludes that even if the Carrier had met its burden of proof, the discipline assessed was excessive and unjustified. The Organization urges that the claim be sustained.

We have carefully reviewed the record in its entirety. The facts of this case are not in dispute. It is clear that the leased light plant Claimant was to tow with his van was not supplied with a cotter pin or other locking device. While that was not Claimant's fault, Claimant's testimony also establishes that he was aware that such a device was necessary to safely perform his task, and he made a poor decision to drive to another location to secure a locking device rather than obtaining it by some other means. His testimony that the light plant was securely hitched to the van is belied by the fact that it came unhitched almost immediately after Claimant began to drive. **S-12.13.2 Inspection** specifically addresses this situation: "If the vehicle and trailer hitch are not compatible in size and design, or if locking devices are defective, *do not tow the trailer.*" The Carrier has proven, by substantial evidence, that Claimant committed the Rules violations alleged. With respect to the penalty, Claimant failed to operate as safely as he knew he should, and this is a serious violation which could have had much more severe consequences. We cannot say that the penalty assessed is arbitrary or excessive.

AWARD

Claim denied.


DAN NIELSEN
Neutral Member


JOY MENDEZ
Carrier Member


DAVID TANNER
Organization Member

Dated this 20th day of Feb, 2014.