

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6986

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

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 6986 Case No. 26
Carrier File No. 12-09-0033
Organization File No. B-2929-7
Claimant: Nathan L. Ruch

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on January 23, 2009, when Claimant Nathan L. Ruch was dismissed for violation of Maintenance of Way (MOW) Operating Rules 1.1.1 – Maintaining a Safe Course, 1.1.2 – Alert and Attentive, 1.6 – Conduct, 1.6.1 – Careless of the Safety of themselves or others, 1.9 – Respect of Railroad Company, and MOW Safety Rule S-12.1.1 – Use headlights any time the vehicle is moving.
2. As a consequence of the violation referred to in part (1) above, we request that the charges be removed from the Claimant's record, the Claimant be returned to work, and paid for all time lost.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

The Claimant was dismissed from all service for allegedly violating Maintenance of Way Operating Rules 1.1.1 – Maintaining a Safe Course; 1.1.2 – Alert and Attentive; 1.6 Conduct, 1.6.1 – Careless of the Safety of Others or Themselves; 1.9 – Respect of Railroad Company, and MOW Safety Rule S-12.1.1 – Use Headlights any time the vehicle is moving. More particularly, the Claimant was driving his personal vehicle, a Ford Explorer, from the motel in which his crew was staying to his work site during the early morning hours of January 23, 2009 when the headlights of his vehicle momentarily flickered and went dark for two intervals, estimated by eye-witnesses as lasting between five and ten seconds each. After the second interval, the Claimant pulled his vehicle to the side of a highway exit ramp and checked to see why the headlights were malfunctioning. He was unable to observe any obvious cause, but continued driving to the worksite with headlights on and without further incident. Later that day, the Claimant took his vehicle to a local Ford dealer for inspection and repair. The Ford dealer determined that one headlight had become disconnected and that the other headlight had sustained a broken wire. The repairs were made in a few minutes, and the Claimant returned to duty until he was dismissed. The Claimant submitted a copy of the repair invoice to the Carrier.

The Organization grieved the dismissal as being without just cause, contending that the Claimant had not violated the Operating Rules alleged by the Carrier. The Organization further asserted that the penalty of dismissal was unwarranted because, although the Claimant was paid to drive to the work site, the Claimant was driving his personal vehicle, not a Company vehicle. Furthermore, the Claimant did not intentionally drive without using his headlights and thus, according to the Organization, did not violate MOW Safety Rule S-12.1.1.

The parties were unable to resolve their dispute within the Claimant procedure, and the matter was submitted to Public Law Board 6986 for adjudication.

FINDINGS AND DECISION

Public Law Board No. 6986 (the Board) finds that the parties herein are Carrier and Employee Organization within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and subject matter involved.

Regardless of what other discipline may have been imposed on the Claimant while he was employed by the Carrier, the discipline imposed in the instant matter cannot be sustained, as there is no evidence that the Claimant intentionally turned his headlights off while he was driving. Consequently, there is no valid basis to conclude that he intentionally violated Carrier rules or policies. The investigatory record contains credible evidence establishing persuasively that the Claimant was unaware until the early morning of January 23, 2009 that his vehicle had broken wires or loose connections in one or more of the headlamps of his vehicle. There is no evidence that the Claimant ignored a known condition that created a safety hazard or that he was engaging in highway horseplay at this hour. Fortunately, the Claimant was able to maintain control of his vehicle when the headlights went off, as he testified that he was able to see well enough using his marker lights to continue until the headlights flicked back on a few seconds later.

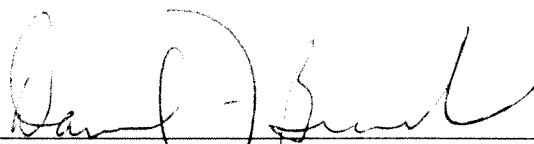
Although perhaps the Claimant should have pulled over sooner to check his vehicle, nothing in the evidentiary record supports the imposition of substantial discipline for horseplay or any intentional safety violation. The Carrier's attempt to portray the claimant as violating a variety of MOW Operating Rules alleging his failure to maintain a safe course is inconsistent with the facts established at the investigatory hearing. The Claimant maintained control of his vehicle at

all times, and did not act in a way that endangered other Company vehicles in the vicinity.

According to the testimony, there were no vehicles on that stretch of highway at this early morning hour other than two other Company vehicles, including a large welding truck. There is no evidence that the welding truck was placed in jeopardy by the Claimant's operating without headlights for a few seconds. Although intentionally driving without headlights for a protracted interval would create a hazardous condition, nothing in the evidentiary record demonstrated that the Claimant knowingly or intentionally turned off his headlights and continued operating his vehicle. Thus, the Board need not determine whether a meaningful distinction arises from the fact that the Claimant was driving his personal vehicle on Company time versus driving a Company vehicle, as the evidence establishes no wrongdoing or other violation by the Claimant. The evidentiary record mandates a conclusion that the Claimant was a hapless victim of circumstances in which a frayed wire broke and a loose wire became detached, causing his headlights to go out for a few seconds. The Claimant took prompt remedial action, both to check his vehicle and to have it professionally diagnosed and repaired, documentary proof of which has been submitted in the record.

However, the evidentiary record also supports the Carrier's contention that the Claimant was less than entirely forthright when questioned by his supervisor shortly after the incident. While the Claimant may have not fully comprehended an inquiry addressing whether he intentionally turned his headlights on and off, his initial denial of the entire subject matter, as portrayed by credible testimony offered by his supervisor at the investigative hearing, was inconsistent with his almost immediately volunteering to provide receipts from the Ford dealer documenting his repair. Such obfuscation justified the imposition of a disciplinary penalty well short of dismissal.

Therefore, based on the evidence submitted in the evidentiary record, there was not just cause for the dismissal of Claimant Nathan L. Ruch. The dismissal shall be reduced to a 10 day actual suspension, and the Claimant shall be restored to his former position, with uninterrupted seniority and benefits and with full back pay, less the ten days wages and less any substitute interim earnings. We so find.


Daniel F. Brent, Impartial Chair

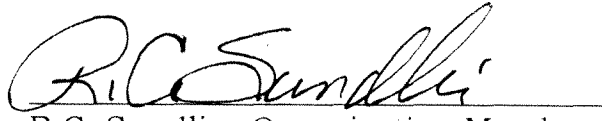
Dated: December 31, 2009

() I concur. () I dissent.


Michelle D. McBride, Carrier Member

Dated: 2/5/2010

(☒) I concur. (☐) I dissent.


R.C. Sandlin, Organization Member

Dated: 2/10/10