

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 114, (Case No. 114)**

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

vs

BNSF RAILWAY COMPANY

**William R. Miller, Chairman & Neutral Member
Joy E. Mendez, 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 December 6, 2010, when Claimant, James I. Barela (1496595), was issued a 20-day Record Suspension, concerning his late reporting of a vehicle accident with damages to the vehicle on September 26, 2010. The Carrier alleged violation of MOWOR 1.1.3 Accidents, Injuries, and Defects.**
- 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 December 6, 2010, and continuing forward and/or otherwise made whole."**
(Carrier File No. 14-11-0025) (Organization File No. 150-13C2-1064.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 October 25, 2010, Claimant was directed to attend a formal Investigation on October 27, 2011, which was mutually postponed until November 9, 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 late report of vehicle accident with damages to BNSF 21663 at approximately 8:00 AM on Sunday, September 26, 2010, while

working as a Track Supervisor in Belen, New Mexico. BNSF first knowledge was Wednesday, September 29, 2010.

This investigation will determine possible violation of MOWOR 1.6 Conduct, MOWOR 1.1.3 Accidents, Injuries, and Defects, MOWOR 1.4 Carrying Out Rules and Reporting Violations, MOWSR 1.5.2 Inspection, MOWSR 12.1.1 General Requirements, MOWSR 12.7 Maintenance/Inspections, and MOWSR 12.14 Accidents/Incidents."

On December 6, 2010, Claimant was notified that he had been found guilty as charged and was assessed a 20-Day Record Suspension.

It is the Organization's position the Claimant discovered damage to company vehicle BNSF 21633 upon reporting to work on the morning of Monday, September 27, 2010. Claimant attempted to call Roadmaster Ellis to report the damage, but was not successful. Claimant took photos of the vehicle at the site, questioned employees at the location if they had seen anything happen to the vehicle and reported the damage to ARI, the leasing company of the vehicle. It argued the Claimant knowing that there was only minor damage to the vehicle went along with his daily duties and it slipped his mind that he did not contact the Roadmaster until she called to ask about the damage. It argued that was not a Rules violation, but instead there had been a lack of communication because the Claimant thought by contacting ARI that he had properly reported the incident. It emphasized that the Claimant never tried to hide the incident and it concluded by requesting that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier the Claimant realized on September 27th, there had been an accident causing damage to the aforementioned vehicle either after he had worked on Sunday the 26th or the following day 27th before reporting to work. It recognized the Claimant reported the damage to ARI, on Monday, September 27, 2010, however, he failed to notify his Supervisor there had been an accident with damage to the vehicle until Wednesday, September 29, 2010. It reasoned he was guilty as charged and it closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and it is determined that the Investigation and appeal process met the guidelines of Rule 13(a) the Discipline Rule and Appendix No. 11.

There is no dispute between the parties that Claimant discovered that the vehicle assigned to him had been involved in a minor accident while he was off duty between September 26 and 27, 2010, which was verified by multiple witnesses. On page 28 of the transcript the Claimant was questioned about the incident and responded in pertinent part as follows:

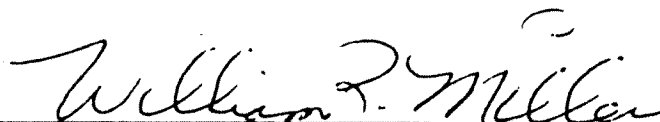
"James I. Barela: ...I had tried calling the, the Roadmaster, I did not get no call, no response back. I did not leave no message, which I should have...."
(Underlining Board's emphasis)

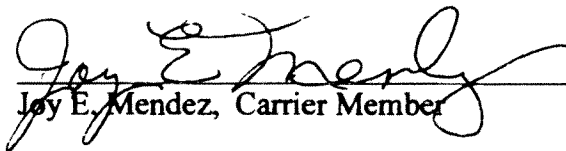
On page 29 of the transcript the Claimant confirmed that he did not report the accident to his Supervisor until September 29th when the Supervisor called him and asked about the incident. The record also indicates that the Claimant never attempted to hide the accident, but is equally clear that the Claimant should have left a message on September 27th advising Roadmaster Ellis about the damage to BNSF 21663, therefore, the record shows 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. At the time of the incident Claimant had approximately 2 and 1/2 years of service with one Level S 30-Day Record Suspension assessed 18 months before this incident and a 10-Day Record Suspension assessed six months prior to this case. The Board finds and holds that based upon the prior disciplinary record the discipline was consistent and appropriate with the Carrier's Policy for Employee Performance Accountability (PEPA) and it will not be rescinded because it was not arbitrary, excessive or capricious.

AWARD

Claim denied.


William R. Miller, Chairman & Neutral Member


Joy E. Mendez, Carrier Member


David D. Tanner, Employee Member

Award Date: May 21, 2013