

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 93, (Case No. 93)**

**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 April 19, 2011, when Claimant N. A. Hart (6468847), was issued a Level S 30-day Record Suspension with a 3 year review period, for his involvement in a collision with a private vehicle while assigned and operating Grapple Truck on April 19, 2011. The Carrier alleged violation of MOWSR S-12.1.1 General Requirements.**
- 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 compensated for his lost time and expense and otherwise made whole."
(Carrier File No. 14-11-0121) (Organization File No. 90-13C2-1122.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 April 25, 2011, Claimant was directed to attend a formal Investigation on April 29, 2011, which was mutually postponed until May 11, 2011, concerning in pertinent part the following charge:

"...for the purpose of ascertaining in a collision on April 19, 2011 at approximately 1156 hours, with a private vehicle at a light-controlled intersection located at 900 West David Street in Conroe, Texas, while assigned and operating Grapple Truck

18446, in violation of Maintenance of Way Safety Rule S-12.1, General Requirements...."

On June 16, 2011, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30-Day Record Suspension with a three year probationary period.

It is the Organization's position that the Carrier did not meet its burden of proof. It argued that the Claimant was charged with having been involved in an accident with a person who was driving illegally with an expired driver's license. It further argued that there was a citation issued at the accident site, but those charges were dropped and the Claimant was not found guilty of anything and on that basis it reasoned he was not guilty. It concluded the Claimant did nothing wrong and it requested that the discipline be rescinded and the claim sustained as presented.

It is the position of the Carrier that the Organization's argument in this case is that charges were dropped and the Claimant was never found guilty of the citation he received from the Police Officer that handled the accident thus he was innocent. However, that did not eliminate the fact that the Claimant allowed the vehicle he was driving to roll back into a car that was sitting behind him in violation of MOWSR S-012.1.1 on April 19, 2011. It closed by asking that the discipline not be disturbed and the claim sustained as presented.

The Board has thoroughly reviewed the transcript and record of evidence and has determined that the Investigation and appeal process met the guidelines of Rule 40 the Discipline Rule of the former BN Agreement and Claimant was afforded his "due process" Agreement rights.

On page 7 of the transcript the Gang Roadmaster, R. Baker was questioned about the incident as follows:

"Tommy Brazier: Can you please tell us what you know about the incident?"

Raymond Baker: The Mr. Hart told me that he was at a light and the car wanted to come out of a parking lot, I believe he said Walgreens, so he rolled back a little bit to let the car in, and it hit the front of another vehicle, his truck hit the front of another vehicle." (*Underlining Board's emphasis*)

On page 11 of the transcript Baker was further questioned about the accident as follows:

"Tommy Brazier: All right, did Mr. Hart give you any description of any damages?"

Raymond Baker: Yeah he said the, can't remember which side of the hood was buckled up just a little bit on the car, on the Impala."

Claimant testified that his truck rolled back, but he did not hit anything. He further testified that the Impala that he allegedly hit had a buckled hood. Contrary to the Claimant's rendition of the accident the Police Officer described the accident as follows:

"Unit #1 a flatbed with a boom, was WB in the 900 block of W. Davis and stopped in traffic when the driver spotted a vehicle trying to exit a private driveway. The driver allowed the unit to back up without safety and it struck #2 BC to FC. Unit #2 was directly behind Unit #1 and Unit #1s driver stated that he did not see any vehicle behind him.

The Police Officer's description of the incident was based upon his conversations with the Claimant and the other person involved as well as his review of the accident site. The Police Officer's narrative of the accident is also consistent with the testimony of Gang Roadmaster T. Brazier. It is further noted that the citation of the Claimant states the following:


"Backed without safety"

The Organization argued that Claimant was never found guilty, but there was no evidence presented that was correct nor does that change the fact that he told his Supervisor he backed into another vehicle. Substantial evidence was adduced at the Investigation that the Claimant was guilty as charged as he failed to operate his vehicle in a safe manner.

The only issue remaining is whether the discipline was appropriate. The discipline assessed was for a serious violation and his personal record reveals that he was not discipline free during the preceding five years. The discipline assessed against the Claimant will not be set aside as it was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) and it was not excessive, arbitrary or capricious. The claim will remain denied.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David D. Tanner, Employee Member

Award Date: 9/24/2012