

SPECIAL BOARD OF ADJUSTMENT NO. 7564

Case No. : 24/Award No.: 24
Carrier File No.: 10-12-0626
Organization File No.: C-12-D040-23
Claimant: John W. Dildine, Jr.

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION)

Statement of Claim:

The Carrier violated the Agreement when on August 27, 2012 Claimant John W. Dildine, Jr. was issued a Standard Formal Reprimand for violation of MOWSR S-12.1 Operation of Motor Vehicles and MOWSR S-12.8 Backing.

As a consequence of the violation, the Carrier should expunge the discipline from the Claimant's personnel file.

Facts:

By letter dated July 11, 2012 the Claimant was directed to attend an investigation on July 18, 2012 "for the purpose of ascertaining the facts and determining your responsibility, if any, in conjunction with your alleged failure to operate the vehicle in a safe and careful manner when the vehicle (24879) backed into a metal cable spool and caused damage to the laser carriage on the Jackson 6700 tamper in the Downers Grove Yard, approximate MP 21.5 on the Chicago Subdivision Chicago Division on 7/6/12 at approximately 1430 hours while assigned as Group two machine operator on Gang TTDX0543." After a mutually agreed to postponement, the investigation was conducted on July 30, 2012.

Carrier Position:

The investigation was fair and impartial. The Carrier is not required to list rules allegedly violated in the Notice of Investigation and is not required to engage in discovery by providing documents in advance of the investigation. There is precedent for having other than the Conducting Officer issue discipline and this does not prejudice the

Claimant. The Claimant's admission that he was responsible for the accident by itself provides substantial evidence, eliminating the need for additional proof. Under the circumstances, the Organization is asking for leniency, which is the prerogative of the Carrier but not the Board, which cannot substitute its judgment for that of the Carrier. Absence of the Policy for Employee Performance Accountability (PEPA) in this case is irrelevant because all employees are provided with a copy.

Organization Position:

The investigation was not fair and impartial because the request for documents in advance of the investigation was ignored and because the Notice of Investigation did not list the rules alleged to have been violated. Furthermore, other than the Conducting Officer issued the discipline. Neither the PEPA nor the Claimant's personnel file was made an exhibit, depriving the Organization of an opportunity to review documents relied on by the Carrier. Roadmaster Norman was not at the scene of the accident and did not investigate, thus he had no real knowledge and was coached on what to say. After the Claimant was questioned, Roadmaster Norman was unfairly questioned a second time so that he could present additional evidence. The Conducting Officer unfairly asked leading and suggestive questions and the Carrier presented no support for the supposed \$1,000 worth of repairs necessitated by the accident. The Claimant was forthcoming and truthful at all times and had taken immediate corrective action once this minor accident occurred. The Carrier could have chosen to work cooperatively with the Organization to prevent future accidents, but instead elected to discipline the claimant and reduce the incentive to report future accidents.

Findings:

The Board finds the investigation to have been fair and impartial. In numerous prior cases heard under this Board, the Board has noted that the Notice of Investigation must be clear about the behavior being investigated but that rules and/or policies allegedly violated do not have to be included in the Notice in order for the Claimant to mount a proper defense. The Board has also stated on numerous occasions that the Carrier has no contractual obligation to engage in discovery by providing relevant documents to the Organization in advance of the investigation. In this instance, the absence of PEPA and the Claimant's personnel file does not constitute a due process violation as there has been no showing that the presence of these documents as exhibits would have made a difference in the outcome. And, while the better practice is to have the Conducting Officer issue the discipline rather than another Carrier official, issuance of the discipline by the Director of Administration in a case in which the Claimant admitted to the accident did not destroy Claimant's due process rights. Neither were those rights trampled upon by the nature of the Conducting Officer's questions or the return of Roadmaster Norman to the witness stand solely to provide copies of the safety rules said to have been violated. As for the supposed coaching of Roadmaster Norman, the Organization has made an accusation for which there is a total absence of evidentiary support.

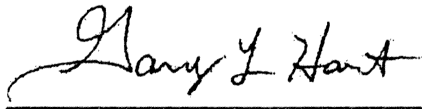
Because the Claimant admitted to the accident, it is unnecessary to analyze the evidence. Although the Carrier did not document the cost of repair to the laser carriage on the Jackson 6700 tamper, the photo marked as Exhibit #3 establishes that damage did occur. While the accident was inadvertent and minor, it occurred because the Claimant did not operate the vehicle in a careful and safe manner (S-2.1.1) and did not verify that there were no obstructions to the backing movement (S-12.8.1). While the Carrier could have elected to respond to the accident with other than discipline, we do not find that it was required to do so.

Award:

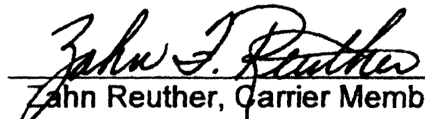
Claim denied.

Order:

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas
February 12, 2014