

PUBLIC LAW BOARD NO. 7585

Case No. 5/Award No. 5
Carrier File No.: 10-11-0590
Organization File No.: C-11-D040-35
Claimants: J. Thompson & D. Garza

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

FACTS:

On July 5, 2011, David Garza drove vehicle 22171 back to the Wegner Building at the headquarters in Alliance, Nebraska. Foreman Jodi L. Thompson was in the passenger seat. The truck had a high boom with tight clearances to enter the building. Both employees agreed the door was open, but as the truck entered, it struck the door causing \$91.11 worth of damage to the bay door. Both employees were found to have violated MOWOR 1.1.1, Maintaining a Safe Course, MOWOE 1.1.2, Alert and Attentive and 7.A.1 and 7.B.6 for failing to notice the door was not fully open. They each received a Level S 30-day record suspension with a one-year review period.

CARRIER POSITION:

The Carrier maintains all charges were proven, and both employees admitted being in violation of the rules. It is clear there was damage to the door because they were inattentive and not alert. The cost of the repairs is inconsequential. The discipline was therefore proper.

ORGANIZATION POSITION:

The Organization asserts it attempted to prove disparate treatment, but was cut off by the Conducting Officer and prohibited from presenting critical evidence. It contends the damage to the building was minimal with no attempt to cover up the incident. Company witnesses equivocated, in its view, and the employees were not negligent because there was nothing to tip them off that the door was not fully open. The incident is not properly characterized as serious because there was no potential for serious injury or fatality.

DECISION:

Though the Conducting Officer was clearly non-receptive to evidence of disparate treatment, at no time during the investigation did the Organization actually offer statements from other employees into the record. As a result, it cannot be said that important evidence was improperly excluded from the record.

The clearance for this truck to get into the Wegner Building is extremely tight and both employees knew this. Indeed, there was even a sign posted at the door in question, warning of the tight clearance. Both employees visually appraised the door as open. Neither hit the remote control button to make sure. In view of the extremely tight clearances, the failure to hit the remote button was negligent in that the employees took a chance and did not confirm that the door was fully open.

There was no bodily harm to anyone. Indeed, the limited extent of the damage to the door is persuasive evidence that the employee's violation did not involve the potential for serious injury or fatality. Though the employees should have hit the remote button, the accident was also attributable to the fact that someone left the door imperceptibly down by mere inches. Reliance on a visual check, though negligent, was an accepted practice and there was no history of difficulty that would have alerted them. As a result, the violation was not serious, but standard.

AWARD:

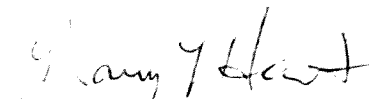
The claim is sustained in part. The record suspensions shall be revoked and replaced with formal reprimands and 12-month review period.

ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

March 18; Cleveland, Ohio


Patricia T. Bittel, Neutral Member


Gary Hart, Labor Member

March 20, 2013



D. J Merrell, Carrier Member