

**P.L.B. No. 7585
Case No. 26
Award No. 26**

PUBLIC LAW BOARD NO. 7585

CARRIER FILE NO. 10-13-0215

ORGANIZATION FILE NO. C-1D040-10

CLAIMANT: Raymond E. Walsh

Parties To Dispute:

**Brotherhood of Maintenance of Way Employees Division – IBT
& BNSF Railway Company**

Statement of Claim: *The Carrier violated the Agreement on February 1, 2013 when it assessed Claimant Ralph E Walsh a Level S 30-day record suspension, with a 1-year review period for alleged violation of Maintenance of Way Operating Rule 1.1- Safety, 1.1.2- Alert and Attentive, Maintenance of Way Safety Rule 1.2.3-Alert and Attentive, 12.1.1- Operation of Motor Vehicle and 12.8-Backing, for alleged failure to be alert and attentive when failing to inspect an area behind the vehicle for obstacles in the path before making a reverse movement resulting in damage to personal vehicle, while working as a Truck Driver in Gillette, WY.*

Background Facts:

On Monday January 14, 2013, employee Jeffrey Deeth parked his Blazer just outside the bay door at the Gillette facility. Claimant Ralph Walsh was working that day as a truck driver. Claimant testified he did a walk around with the bay door closed, got into the Carrier vehicle, looked around for someone to back him out, and seeing no one, he hit the remote to raise the bay door and backed out. He asserts he looked in both mirrors and seeing nothing, he began backing at idle speed. Roadmaster Jay Williams and Trackman Glen Hackman saw him pushing Deeth's Blazer across the packed snow of the parking lot and stopped him.

Claimant asserted he was going so slowly, he did not feel any impact with the Blazer. He recalled there was nothing parked in front of the bay door when he walked in. He further claimed that people do not park in front of that door. He said his general practice is to do a walk-around with the bay door open, but he changed his routine on the day in question. He said he has never had an accident in his 52 years of driving, and though he looked for someone to back him out he did not get out of the truck.

Opinion of the Board:

The facts of the case clearly establish rules violations. Claimant admitted as much. When asked whether he had complied with MOWPR 1.1, he replied "Well, obviously not completely." [TR 26] An employee cannot be said to have been alert and attentive, to have operated the vehicle in a careful and safe manner or to have verified that there were no obstructions in his path while backing, when that employee's vehicle hits a fellow employee's parked truck.

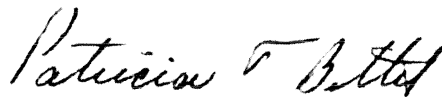
Certainly, Claimant did a walk-around, looked in his mirrors, looked for backup assistance and backed at a very slow speed. However, it is clear that he failed to do his usual walk-around with the bay door open, and as a result, he failed to verify that there were no obstructions in his path. Further, he failed to be alert and attentive enough to realize he had a blind spot and the mirrors were inadequate.

The Organization contends Claimant has received disparate treatment. However, no evidence was presented of any employee who committed a comparable offense yet received a milder form of discipline. Hence, this allegation was not established.

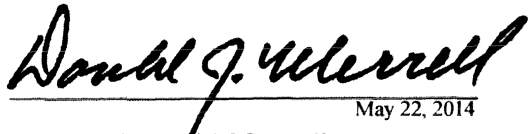
The Organization's arguments otherwise amount to a plea for leniency. The Board is quite aware that fully 52 years of driving without incident is a truly excellent record. However, in the Board's assessment, driving a Carrier vehicle into an employee's personal vehicle is a serious enough event to warrant the Level S 30-day suspension invoked. The initial 36-month review period has already been reduced to a 1-year review period in deference to Claimant's excellent work record. As a result, the record does not support a conclusion that the Carrier breached its discretion in violation of the Agreement.

AWARD:

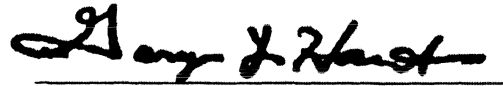
The Claim is denied.



Patricia Thomas Bittel
Chair and Neutral Member


May 22, 2014

Donald Merrell,
For the Carrier



Gary Hart,
For the Organization

Dated: April 15, 2014