

Award No. 10
Case No. 10
NMB Case No. PLB-07602-000010

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
)
v.)
)
BNSF RAILWAY COMPANY)

Carrier File No. 11-11-0068
Organization File No. S-P-1556-G

Claimant — Timothy R. Galde

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The discipline [Level S thirty (30) day record suspension and a one (1) year review period] imposed upon Mr. Timothy R. Galde by letter dated June 18, 2010, for alleged violation of MOWOR 1.3.1 Rules, Regulations, and Instructions and MOWSR S-12.1.1 Operation of Motor Vehicles, in connection with charges of alleged failure to operate a motor vehicle in a careful and safe manner on July 22, 2012, at approximately 1556 hours, at or near MP 176.21, 185th Street, on northbound Interstate 5, resulting in an incident between BNSF Vehicle #15126 and another vehicle, while assigned as B&B Foreman (BBCX0450), headquartered at Interbay (Seattle), Washington.**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant Timothy R. Galde shall now receive the remedy prescribed by the parties in Rule 40(G).**

BACKGROUND:

The Claimant, a Structures Foreman based at Interbay (Seattle), Washington, has been employed by the Carrier since 2002. Prior to this incident, he had no discipline on his record. On the afternoon of July 22, 2010, he was driving a Carrier vehicle northbound from Seattle toward Everett, Washington, on Interstate 5 when it was involved in an accident, at MP 176.21, near 185th Street. By letter dated July 29, 2010, he was notified of an investigation into "alleged violations that occurred at approximately 1556 hours, July 22, 2010, on northbound Interstate 5 . . . resulting in BNSF Vehicle #15126 being involved in a vehicle accident, including failure to operate the motor vehicle in a careful and safe manner, while you were assigned as B&B Foreman"

The investigation was held August 19, 2010. According to the Claimant, he was driving in the middle lane and had just moved into the far left lane, next to the HOV lane, when a vehicle from one of the right-hand lanes suddenly veered over and cut ahead of the vehicle two cars ahead of him. Both of the cars ahead braked suddenly in response. When the Claimant applied his brakes hard, "my truck started skidding and the front end bounced and the steering wheel shook." He eased up on the brakes as he skid and attempted to swerve to avoid the car immediately in front of him, a Volvo. Claimant stated that he was traveling about 30 mph when he first applied his brakes, but his truck struck the rear of the Volvo nonetheless. No one was injured. Claimant and the other vehicle pulled to the side of the road and immediately contacted the state highway patrol.

The Claimant also promptly telephoned his supervisor, Chad Gordon, who in turn contacted the Carrier's Claims Representative in the area, Greg Bean. Gordon and Bean went to the scene of the accident. They confirmed that the Claimant was not injured, although he was understandably shaken. Photographs taken at the scene show damage to the front bumper on the truck Claimant was driving and damage to the left rear quadrant of the Volvo. The state trooper at the scene issued a traffic citation to the Claimant for a violation of Vehicle Code §46.61.145 for "Following Too

Close,” with bail due in the amount of \$175.00. Paragraph (1) of the statute, also titled “Following too closely,” states:

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

After dealing with the police, Gordon drove the Claimant back to the Depot in Everett to start the process required in every vehicle accident: reports, drug and alcohol testing, and so on. The Claimant tested negative for banned substances. He also prepared a statement the he gave to Greg Bean for insurance purposes.

At the hearing, the Claimant testified that he had been having mechanical issues with his truck before the accident, in that the front end would shake under certain driving conditions. He described a “violent shimmy or shaking the steering wheel to where it would shake from side to side. Either hitting bumps or applying firm pressure to the brakes, that’s just a pretty bad shake causing it to where you had to kind of slow down to get it to go away and then you could maintain.” He took the truck to the shop several times and was told that the vehicle appeared to be okay and was safe to drive. Mechanical records for the vehicle establish that on March 2, 2010, the Claimant reported that the brakes pulsed and there was a noise in the front end. In late March, the truck’s shift linkage needed repair. On April 13, 2010, Claimant took the truck into the garage again, asking to have the front end checked because it “does not feel right.” On July 2, 2010, the vehicle was back in the shop again, because of a “clunking noise in front end.”

On the afternoon of the accident, the Claimant stated, the two cars ahead of him “panic braked” when the lead car was cut off. He thought that he had ample room to brake, but when he applied the brakes, the truck went into a skid and started bouncing. The steering wheel started shaking back and forth violently, as it had been doing when he took the vehicle to the mechanics to be checked out. The Claimant felt that the issue was not so much a problem with the braking system as a steering problem that showed up under certain braking conditions. He had not had an opportunity since the last visit to the mechanics to slam on the brakes to see how the

vehicle reacted. The Supervisor testified that the shop indicated that the steering “pulled” and recommended a stabilizer. The Claimant stated that he did not believe that he had operated his vehicle in an unsafe manner and that the accident occurred because of the prior mechanical issues that he had tried to have fixed. He was driving in a defensive manner, carefully and safely, and the accident was due to mechanical failure. He stated that the state trooper who gave him the citation did not take a statement from him or ask him any questions about what had happened, just handed him the citation.

Following the investigation, the Carrier concluded that the Claimant had violated MOW Operating Rule 1.3.1, requiring employees to comply with all safety rules, and MOW Safety Rule S-12.1, Operation of Motor Vehicles, Section S-12.1.1, General Requirements, in that he had failed to “Operate the motor vehicle in a careful and safe manner.” The record includes a copy of the BNSF Vehicle Policy and Procedure Manual. Section 16, Safety, Paragraph A, Vehicle Laws, Policies and Instructions, requires vehicle operators to comply with local, state and federal motor vehicle laws, as well as company rules, policies and instructions. Paragraph B, Defensive Driving, requires vehicle operators to “drive in a manner to prevent accidents, regardless of others’ driving or failure to observe traffic regulations.”

The Carrier determined that these violations were Serious Offenses under its PEPA Policy and imposed a Level S 30-Day Record Suspension, along with a one-year Review Period, on the Claimant. The Organization objected and filed this Claim, contending first, that there were substantial procedural defects during the investigation¹ and more substantively, that the penalty is too severe. The collision was caused by the vehicle’s mechanical condition, which is a mitigating circumstance that the Carrier should have considered before imposing such a harsh penalty.

¹ The Board does not find that any procedural irregularities tainted the investigation enough to warrant reversing any otherwise appropriate penalty as a result. In particular, the Organization complained that the statement written by the Claimant for insurance purposes constituted an improper investigation without representation. Outside the employment setting, it is common for individuals who have been in accidents to be asked to memorialize their recollections as soon after the event as possible. There is no evidence that the Claims Representative questioned the Claimant or did anything other than ask him to write down what he remembered about the incident. Thus, the request that he make a statement did not rise to the level of an “investigation,” for which Claimant would be entitled to formal union representation.

FINDINGS AND OPINION:

The Public Law Board, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Public Law Board has jurisdiction over the dispute involved herein.

There is no dispute between the parties that the Claimant was involved in an accident in which his vehicle struck the one ahead of him. The only question for determination by the Board is whether the Carrier properly disciplined him under the circumstances that pertained. Both vehicles sustained damage, the Volvo much more severe than the truck: the left rear quadrant of the Volvo was crushed, causing the rear window to shatter, while only the truck's bumper was affected.² The Claimant was given a traffic citation for following too closely.³ The record includes evidence that the truck had been having problems with its front end and brakes for several months before the accident.

Rear end collisions are frequently blamed on the driver of the following vehicle, on the theory that a driver must be alert and prepared to deal with whatever unexpected conditions arise on the road, including sudden stops by the vehicles ahead. There is no evidence in the record to suggest that the incident was not set in motion as the Claimant testified, by a fourth vehicle suddenly cutting in front of the vehicle two cars ahead of the Claimant, or that the Claimant did not take what steps he could under the circumstances to avoid striking the vehicle ahead of him. In addition, it would appear from the record that the truck did manifest mechanical problems related to the sudden hard braking. But the record also establishes that the Claimant knew that there were mechanical problems in the front end that had an effect on how the truck braked, which that two or three trips to the shop had not been able to identify or correct. As a result, he needed to drive keeping the truck's mechanical

² The location of the damage corroborates the Claimant's testimony that he attempted to swerve to avoid the Volvo. Had Claimant not done so, the impact would have been head-on, not just at one corner.

³ The record does not indicate whether the Claimant challenged the citation and, if so, whether the citation was upheld or dismissed.

issues in mind. Defensive driving involves not only driving with a constant eye to what others on the road are doing, but also operating one's own vehicle in a manner consistent with its limitations. In the case of BNSF Vehicle #15126, this meant allowing even more than the recommended safe braking distance between vehicles. The fact that the Claimant was unable to avoid a collision does suggest that he was driving too close behind the Volvo *given the mechanical limitations of his vehicle*. He might have been able to stop safely under ordinary circumstances, but those were not the conditions under which he was driving. Given the circumstances, the Board will not second-guess the Carrier's conclusion that the Claimant violated MOWOR 1.3.1 and MOWSR S-12.1.1 or its determination that the violations warranted treatment as a Level S safety violation.⁴

When all is said and done, the Claimant is clearly a valuable employee with an excellent record who appears to be a good driver in the ordinary course of things. It is unfortunate that the chain reaction of events initiated by another driver darting across traffic to cut in front of the cars ahead of him resulted in his vehicle making contact with the one directly ahead of him. In the absence of any objective accident investigation absolving the Claimant of any role in the accident, however, the Carrier's conclusion that his driving contributed to the incident was not arbitrary, capricious or excessive. Traffic accidents are serious matters, and the Carrier's decision to impose a Level S record suspension was similarly not arbitrary, capricious or excessive.

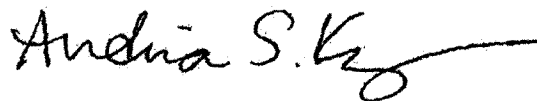
AWARD

Claim denied.

⁴ The Organization objected to Claimant's having been subjected to the top disciplinary step before termination, alleging that a single minor slip-up would subject him to termination within the one-year review period. The Board cannot make decisions based on speculation about possible future events. If the Claimant were terminated for a minor infraction, the Organization could then file a Claim, which would be dealt with based on the fairness of the action at the time.

ORDER

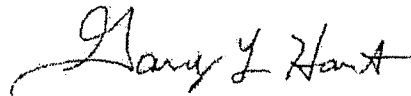
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Andria S. Knapp, Neutral Member



Zahn Reuther, Carrier Member



Gary Hart, Organization Member

April 29, 2013

Date