

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

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

Carrier File No. 10-12-0599
Organization File No. C-12-D040-18

Claimant — Richard Hart

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The discipline [Level S thirty (30) day record suspension and a three (3) year review period] imposed upon Mr. Richard Hart by letter dated July 17, 2012, for alleged violation of MOWSR 1.2.3 Alert and Attentive and MOWSR 12.1 Operation of Motor Vehicles, in connection with charges of alleged failure to be alert and attentive and alleged failure to safely operate vehicle 23917 at approximately 1600 hours on Sunday, June 3, 2012, in Pella, IA, while employed as a Structures Mechanic.
2. As a consequence of the violation referred to in Part (1) above, Claimant Richard Hart shall now receive the remedy prescribed by the parties in Rule 40(G).

BACKGROUND:

The Claimant, a Structures Mechanic, entered service with the Carrier on August 2, 2004. The essential facts of what occurred are not in dispute. On the afternoon of June 18, 2012, Claimant was involved in a minor accident while driving a Carrier-owned passenger cab pickup truck (Vehicle #23917), when he sideswiped the right front corner panel of a parked 2003 Celica as he pulled into a parking spot at a Hy-Vee grocery store in Pella, Iowa, at about 1600 hours. Claimant

was away from home on a work assignment and had gone to the Hy-Vee to get something to eat. The truck appeared unharmed but there was visible damage to the Celica. According to the Claimant's testimony at the investigation, he was aware that he had struck the Celica, and he panicked at the thought that he could be fired. He did not know what to do. He left the scene and returned to the motel where he was staying. Pella Police found him there a short time later. They filled out an Accident Report, and the Claimant was charged with striking an unattended vehicle and leaving the scene. The Claimant did not contact his supervisor, Bill Lovelace, immediately, but called him the next morning shortly after 6:00 a.m. to report the accident. The two men spoke at about 6:30 a.m. Claimant was not scheduled to start work until 7:30 a.m.

The Carrier lodged two separate sets of charges against the Claimant, one related to the accident itself and the second related to his failure to report the accident promptly. The Organization filed claims in both cases. This Award addresses the first of those charges; Award No. 16 addresses the second.

Separate investigations on the two charges were held June 18, 2012, and established the basic facts.

By letter dated July 17, 2012, the Carrier found that Claimant had violated MOWSR 1.2.3 Alert and Attentive and MOWSR 12.1 Operation of Motor Vehicles and assessed discipline in the form of a Level S 30-Day Record Suspension, with a three-year review period. The record does not include a copy of MOWSR 1.2.3; at the investigation, the Carrier introduced MOWOR 1.1.2, Alert and Attentive, which states: "Employees must be careful to avoid injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury." MOWSR 12.1, "Operation of Motor Vehicles," includes under S-12.1.1, "General Requirements" a bullet point admonishing employees to "Operate the motor vehicle in a careful and safe manner."

By separate letter also dated July 17, 2012, the Carrier found that Claimant had also violated MOWOR 1.1.3, Accidents, and MOWSR 1.2.3, Reporting, and assessed him a second Level S 30-Day Record Suspension, with a three-year review period. Neither of those rules was introduced at the investigation. Instead, the Carrier introduced MOWOR 1.6, Conduct, which states that "Employees must not be . . . Negligent," and MOWSR S-12.14, Accidents/Incidents, "Promptly report traffic incidents, accidents, and vehicle damage, no matter how minor, to the proper manager." MOWOR 1.1.3, Accidents, Injuries, and Defects, states, in relevant part: "Report by the first means of communication any accidents, personal injuries, defects in tracks, bridges, or signals, or any unusual condition that may affect the safe and efficient operation of the railroad. Where required, furnish a written report promptly after reporting the incident. The employee on whom the responsibility most naturally falls must assume authority until the proper manager arrives...."

According to the Carrier, its determination to impose a Level S 30-Day Record Suspension for Claimant's accident was fully warranted. He has acknowledged his responsibility for the accident. He was clearly not "alert and attentive," as required by Carrier rules, and he failed safely to operate Vehicle 23917 when he sideswiped the parked Celica in the Hy-Vee parking lot on June 3, 2012. The level of discipline was not excessive. Appendix A of PEPA sets forth Serious Violations. It includes, in part: "1) Violation of any work procedure that is designed to protect employees, the public and/or others from potentially serious injury(ies) and fatality(ies)." Vehicular negligence falls under this category.

The Organization contends that the level of discipline is excessive for the infraction. In addition, the Claimant is unfairly being disciplined twice for the same incident. There are significant procedural due process violations as well. The Carrier failed adequately to state the alleged rules violated in the Notice of Investigation and subsequently found Claimant guilty of violating rules that were not raised at the investigation or submitted into the record. Finally, the discipline was issued by someone other than the Hearing Officer, who was not present and was accordingly unable to make informed judgments about the evidence.

FINDINGS AND OPINION:

Public Law Board 7602, 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 Board has jurisdiction over the dispute involved herein.

The issue here is not whether the Claimant was responsible for a fender-bender with a parked car in the parking lot of a grocery store, but the level of discipline meted out to him as a result. According to the Carrier, the incident falls under PEPA's Appendix A list of Serious Violations, specifically, #1: "Violation of any work procedure that is designed to protect employees, the public and/or others from potentially serious injury(ies) and fatality(ies)..." While any accident is cause for concern, some are more serious than others. Here, Claimant sideswiped the car in the next parking spot as he pulled into his own spot. The other car was parked and no one was in the car. The mechanics of parking mean that he was travelling at very low speed. As accidents go, this was minimal.

The PEPA sets up three categories of violations: Standard Violations, Serious Violations, and Stand Alone Dismissible Violations. A Standard Violation is defined as "a violation which does not subject an employee or others to potentially serious injury or fatality and does not meet other criteria for a Serious or a Stand Alone Dismissible violation, as provided herein...." A first Standard violation typically results in a Formal Reprimand with a 12-month review period. The next rung up

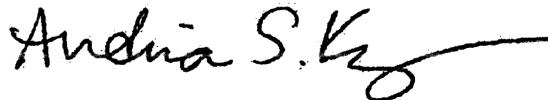
the disciplinary ladder, Serious Violations are listed in Appendix A and include operating rule violations for which FRA decertification is mandated, unauthorized absence, tampering with safety devices, and EEO policy infractions. While the list in Appendix A is non-exhaustive, the listed examples demonstrate the obviously serious nature of the misconduct. Categorizing Claimant's minor accident as a Level S violation is excessive, given all of the circumstances, including the fact that he had no prior discipline. Per the PEPA, he should have been assessed a first Standard violation with a 12-month review period, and Claimant's discipline shall be reduced accordingly.

AWARD

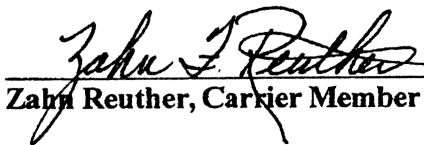
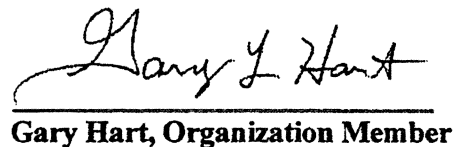
The Claim is sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Andria S. Knapp, Neutral Member


Zahn Reuther, Carrier Member
Gary Hart, Organization Member

February 12, 2014

Date