

Award No. 16
Case No. 16
NMB Case No. PLB-07602-000016

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

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

Carrier File No. 10-12-0600
Organization File No. C-12-D040-19

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 MOWOR 1.1.3 Accidents, Injuries, and Defects and MOWSR 1.2.8 Reporting, in connection with charges of alleged late reporting of a vehicle accident involving BNSF Vehicle 23917 that occurred at approximately 1600 hours on Sunday, June 3, 2012, and allegedly not reported to his supervisor until approximately 0630 hours on Monday, June 4, 2012.
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 second of those charges; Award No. 15 addresses the first, and the two cases should be read together.

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. (This is the claim currently under review.) 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 failure to report the accident immediately was warranted. He has acknowledged his responsibility for the accident. Employees are clearly required to report any and all accidents promptly, which he did not do. The accident occurred on June 3, 2012, in the late afternoon and Claimant did not contact anyone at BNSF until the next morning. The level of discipline was not excessive. Appendix A of PEPA sets forth Serious Violations, and one of the listed infractions is #8, “Late reporting of accident or injury.” The fact that the Notice of Investigation did not list specific rules infractions by number did not make the proceedings unfair or biased, because it clearly informed the Claimant what he was being investigated for with sufficient detail for him and for the Organization to prepare for the investigation.

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.

As with companion case, Award No. 15, the facts of what happened are not in dispute. While attempting to pull a BNSF vehicle into a parking spot at a grocery store where he had gone to get something to eat while stationed away from home for work, the Claimant accidentally sideswiped the car parked in the adjacent parking spot. The accident occurred June 3, 2012, at about 4:00 p.m. Claimant panicked and left the scene. He did not contact his supervisor to report the accident until the next morning sometime between 6:00 a.m. and 6:30 a.m.

As a result of Claimant’s failure to report his accident promptly, the Carrier assessed him a Level S 30-Day Record Suspension with a three-year review period. In contrast to the situation in the companion case, late reporting of an accident is included in PEPA’s Appendix A list of Serious

Violations. The record establishes that Claimant was late in reporting that he had been in an accident and there is no justification for the delay. According, the penalty was appropriately imposed.

The Organization has raised a number of procedural objections that must be addressed. The first is an alleged failure of adequate notice, in that the Notice of Investigation did not indicate which specific rules Claimant was alleged to have violated, by rule number. Related to this is the Organization's objection that certain rules were introduced at the investigation but the Claimant was found guilty of having violated other rules. These objections are not persuasive. The Notice of Investigation clearly informed the Claimant that he was being investigated for "your late reporting of vehicle accident and allegedly leaving the scene of vehicle accident involving BNSF Vehicle 23917 that occurred at approximately 1600 hours on Sunday, June 3, 2012, and allegedly not reported to your supervisor until approximately 0630 hours on Monday, June 4, 2012." The description of what the charges are and what event was involved is sufficient to inform the Claimant and the Organization and to enable them to prepare for the investigation. The introduction of one set of numbered rules into the record at the investigation and guilty findings on other numbered rules could be a serious procedural defect *but for the narrow circumstances of this case*, where the rules at issue are so similar in nature. The difference demonstrates carelessness on the part of the Carrier, but it did not adversely affect the Claimant. The essence of the charge against the Claimant was late reporting of an accident. That obligation is clearly set forth in MOWSR S-12.14, Accidents/Incidents, which requires employees to "Promptly report traffic incidents, accidents, and vehicle damage, no matter how minor, to the proper manager." MOWOR 1.1.3 and MOWSR 1.2.8 are merely variations on that obligation. If the Carrier had charged and investigated Claimant on one rule and found him guilty of a significantly different rule, that would be a serious procedural defect. Here, the difference in the substance and content of the rules cited is minimal and no harm was done.

The Organization also contends that the Claimant is being punished twice for the same offense. That is not true. While both charges arose from a single incident, they were nonetheless distinct offenses for which the Claimant could be disciplined. The Claimant was negligent when he struck the car parked next to the spot he was trying to pull into with the company truck. Entirely separate was his failure promptly to report the accident. Had he contacted his supervisor when the accident happened instead of waiting until the next morning to do so, the second charge would not have been brought against him. It was not inappropriate for the Carrier to file a second charge against the Claimant for his separate violation of Carrier rules.

The Organization also complains that the final decision was issued by someone other than the original Hearing Officer. In a case like this one, where the facts are not in dispute, the role of the Hearing Officer in making determinations of witness credibility is substantially reduced, and the

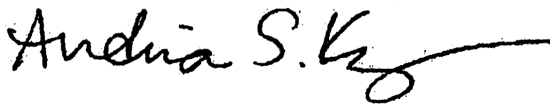
fact that another company official issues the actual decision letter in this case is not a violation of Rule 40.

AWARD

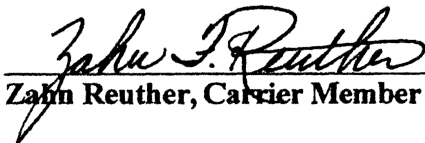
Claim denied.

ORDER

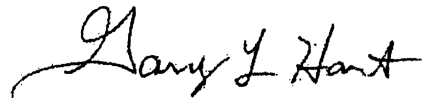
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Andria S. Knapp, Neutral Member



Zahn Reuther, Carrier Member



Gary Hart, Organization Member

February 12, 2014

Date