

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 76, (Case No. 76)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing November 24, 2010, when Claimant, Steve L. McAdams (1273796), was issued a Level S 30-day Record Suspension with 1 year probation for failure to control his vehicle which resulted in damages on September 14, 2010. The Carrier alleged violation of MOWOR 1.1.2 Alert and Attentive and MOWSR 12.8.1 Vehicles.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be compensated for his lost time and expense and otherwise made whole."**
(Carrier File No. 14-11-0024) (Organization File No. 210-13C2-1058.CLM)

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On September 17, 2010, Claimant was directed to attend a formal Investigation on September 28, 2010, which was mutually postponed until November 4, 2010, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to control vehicle number 21464 to which you were assigned on Tuesday, September 14, 2010, at approximately 0500 hours, in Old South Yard on the Mykawa Subdivision, which resulted in damages totaling approximately \$1,500, in violation of Maintenance of Way

**Operating Rule 1.1.2, Alert and Attentive and, Maintenance of Way Safety
Rule 12.8.1, Vehicles."**

On November 24, 2010, Claimant was notified that he had been found guilty as charged and was assessed Level S 30 Day Record Suspension with a one year probationary period.

It is the Organization's position that the Carrier did not meet its burden of proof and even if it had, which it did not, the discipline exercised was excessive rather than rehabilitative. It closed by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier the Claimant was guilty of failing to inspect the area behind his vehicle before he backed it into a pole and the subsequent discipline it exercised was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). It concluded by asking that the discipline not be disturbed.

The Board has thoroughly reviewed the transcript and record of evidence and has determined that the Investigation was held in accordance with Rule 13(a) the Discipline Rule and Appendix No. 11.

The Carrier alleged that on September 14, 2010, the Claimant violated the following Rules which state:

"1.1.2 Alert and Attentive

Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury.

S-12.8 Backing

12.8.1 Vehicles

Position the vehicle, when possible, to avoid backup movement. Before backing, inspect areas to the rear to verify that no personnel or obstructions are in the path of movement. When backing vehicles, including vans, but other than automobiles and pickup trucks:

- * Position someone near the back of the vehicle to guide movement, when available.**
- * Sound the horn three short blasts in vehicles not equipped with backup alarms.**
- * Stop if the person guiding the movement disappears from view."**

On page 17 of the transcript, the Claimant was questioned about the incident that transpired at the Houston, Texas, Old South Rail Yard on September 14th. Claimant testified as follows:

"Tommy Brazier: Can you tell us about, can you tell us what you know about the incident on September the 14th?"

Steve McAdams: I was called out about 2:30 in the morning for service interruption on the north end of track 841 and it was a dead battery on the switch, I ended up changing the battery on the switch and then I was going back to the office to start my next day's duty, I backed into the pole.

Tommy Brazier: And were you working alone on that date?

Steve McAdams: Yes sir.

Tommy Brazier: All right, prior to backing into the pole did you make an inspection around the back of the vehicle to see if there were any obstructions in your path?

Steve McAdams: No sir." (Underlining Board's emphasis)

Despite the Organization's vigorous arguments in behalf of the Claimant such as the allegations that the lighting in the area was poor and if the truck had backing proximity sensors or if the pole he backed into had reflective tape on it the accident might have been avoided does not eliminate the fact that the Claimant backed into a pole and caused significant damage to a Carrier vehicle because he did not follow the directives set forth in the Rules he was charged with having violated. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 20 years of service with a good work record, however, Claimant's violation was of a serious nature. Review of the discipline exercised indicates that it was in accordance with PEPA, therefore, the Board finds and holds the discipline will not be set aside because it was not excessive, arbitrary or capricious. The claim will remain denied.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David D. Tanner, Employee Member

Award Date: 1-10-12