

PUBLIC LAW BOARD NO. 7394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY
(Former St. Louis—San Francisco Railway Co.)

Case No. 24 – Award No. 24 – Claimant: Meek
Carrier File No. 12-11-0024 / Organization File No. B-2524-9

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assessed Mr. Stephen B. Meek a Level S 30-day Record Suspension with a one-year probation period for his alleged failure to place the steering wheel cover over the steering wheel of Vehicle No. 17391 while boom equipment was deployed, October 1, 2010 at approximately 1130 hours when working as welder helper on Gang TRWX0121 near MP 302., Ft. Scott Subdivision violating Engineering Instruction (EI) 15.5—Vehicles Equipped with Cranes.
2. As a consequence of the Carrier's violation referred to in part (1) above, we request that the discipline be removed from Mr. Meek's personal file and he be made whole for all time lost including all expenses incurred.

FINDINGS:

Public Law Board No. 7394, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, Stephen B. Meek, has been employed by the Carrier since 1994. On October 1, 2010, the Carrier assessed Claimant a 30-day record suspension with a one-year review period in connection with his alleged failure, on October 1, 2010 at

approximately 1130 hours, to place the steering wheel cover (BNSF Item No. 362050005) over the steering wheel of Vehicle No. 17391 while boom equipment was deployed. On October 11, 2010, the Carrier notified Claimant to attend an investigation in connection with this incident. Following the investigation, on November 19, 2010, the Carrier issued Claimant a letter upholding the discipline.

The applicable Carrier Engineering Instruction provides:

15.5 Vehicles Equipped with Cranes

All vehicles equipped with cranes must be equipped with a standardized steering wheel cover with a message reminding the driver to stow boom and outriggers prior to travel. The truck driver must place the cover over the steering wheel when the boom and outriggers are deployed.

The specified steering wheel cover, with the message, "Danger. Do Not Operate...Verify Boom Stowed...Verify Outriggers Stowed" had been assigned BNSF Item No. 362050005.

Jason Winans, Carrier Roadmaster at Fort Scott, Kansas, testified at the investigation that on October 11, 2010 he and a Foreman were performing safety inspections, when, at about 10:30, he noticed that Claimant and his co-worker, Lead Welder Ronald A. Yarsulik, were doing an excellent welding job with their welding, but the outriggers were out from their truck and their boom cover was missing from the steering wheel. He added that he pulled the two employees off the track and asked them if there was anything they should be doing differently, and Claimant immediately stated that they had forgotten the cover. Mr. Winans stated that both employees knew immediately what was wrong, and Claimant told him they had had a job briefing and discussed the matter but had simply forgotten. Mr. Winans stated that the number of the vehicle at issue was 17391.

Mr. Winans testified that no one else had brought the missing cover to his attention; rather, he stated, he observed it himself and got up into the vehicle to check the situation. He also maintained that when he stopped Claimant and Mr. Yarsulik in their work, they walked over to the truck and saw the cover missing. Mr. Winans testified several times that Claimant knew right away that he and his co-worker had failed to put on the cover. He added that the employees asked whether he could just let the situation go and make sure they did not do it again, and Mr. Winans replied that that would not look good to other employees.

Mr. Yarsulik testified at the investigation that he always puts the steering wheel cover on the vehicle when required, and on this occasion the outriggers were out and the

boom was up. However, he explained, there was no latch that would lock it in place and the day of the incident was windy. He stated that when Mr. Winans questioned them he did not know what was wrong, and Mr. Winans never took them to their vehicle to show them. He stated that Mr. Winans told him that an employee from a different craft had noticed the missing steering wheel cover and had reported it. Mr. Yarsulik added that he was nervous and did not look at the vehicle to see if the cover was in fact missing, and he and Claimant were removed from duty and subjected to drug and alcohol testing, and never returned to their truck.

Claimant testified at the investigation that at the time of the incident Mr. Winans approached him and stated that he wanted to have a conversation about putting the steering wheel cover on a vehicle prior to deploying the outriggers. Claimant stated that he was not the truck driver but it was common practice to put on the cover. He stated that there was a job briefing prior to starting the day's work, and it included a discussion of the cover. Claimant stated that after the general job briefing, there was another briefing when they got to their truck, prior to operating the boom and outriggers, about the day's tasks. He added that the briefing included also discussion of the steering wheel cover.

He added that since he was not the driver he did not put the cover on, and he was outside the truck getting set up following the job briefing. However, Claimant initially testified that he had confirmed that the cover was on. When asked later in the investigation whether he had seen the cover on or off the vehicle, however, Claimant replied "no" to both questions.

Claimant maintained that when Mr. Winans approached him and Mr. Yarsulik and asked which "five critical" they believed they had violated, he replied that he did not know, was it the steering wheel cover? He maintained that he did not tell Mr. Winans that the cover was not on the wheel. He also stated that he and Mr. Yarsulik did not return to their truck after this conversation.

Claimant testified that vehicle 17624 was the truck he and Mr. Yarsulik were welding out of on October 1, 2010. He stated that he did not know what vehicle 17391 was. Claimant confirmed Mr. Yarsulik's testimony that the supposed violation had been reported by an individual from a different craft.

Claimant's personal record shows no prior discipline.

On the merits, the Carrier asserts that the facts are simple. On October 1, 2010, the Carrier states, Claimant was working as a Welder Helper assigned to TRWX0121 and was assigned to assist Welder Yarsulik with deploying the boom and outriggers on their welding truck, a process which includes placing the cover on the vehicle's steering wheel. The cover, the Carrier points out, indicates to other employees that the boom and outriggers are deployed and the vehicle should not be operated until they are stored, and also serves to remind the vehicle's operators that they need to stow that equipment before operating the vehicle.

The Carrier states that the record shows that after Claimant and Mr. Yarsulik deployed their equipment and began performing welds, Mr. Winans, who was walking the track performing general inspection of the project, noticed that Claimant's vehicle did not have the steering wheel cover properly installed. The Carrier points to Mr. Winans' testimony that when he asked Claimant about the situation, Claimant freely admitted that the employees had failed to properly install the steering wheel cover.

As for the Organization's focus on the wrong vehicle identification number, the Carrier asserts that neither Claimant nor Mr. Yarsulik informed Mr. Winans, when they all looked at the vehicle lacking the steering wheel cover, that it was not their vehicle. The Carrier argues that it is obvious that Mr. Winans simply noted the wrong vehicle number and that does not change the fact that Claimant and Mr. Yarsulik knew what Mr. Winans was questioning them about and neither denied at the time that it was their vehicle. On the contrary, the Carrier states, the testimony clearly indicates that the two employees were well aware of the seriousness of the violation. In addition, the Carrier point out, the employees never actually stated that the cover was in place on their vehicle's steering wheel, stating instead that they "always" placed the cover or that they did not know if it was there.

With respect to the Organization's attempts to discredit Mr. Winans by stating that he never actually looked at the vehicle but instead relied on information from other sources, the Carrier notes that Mr. Winans emphatically denied that this was the case. On the contrary, the Carrier points out, Mr. Winans testified that he physically saw that the cover was not placed on the steering wheel while the boom and outriggers were deployed. It is well established, the Carrier states, that the Hearing Officer's credibility resolutions, in this case his decision to credit Mr. Winans' testimony, should not be disturbed by this Board.

Finally, the Carrier states that the discipline assessed against Claimant was in accordance with its PEPA, and was neither excessive nor unwarranted given the serious nature of the offense. For all of these reasons, the Carrier urges that the claim be denied.

The Organization contends that Claimant was disciplined for a steering wheel cover violation on a vehicle he had never operated and with which he had no connection. The Organization asserts that Roadmaster Winans' version of the facts is not supported by the record, as he reported an inaccurate truck identification number, offered different accounts of the discussions with the employees and never verified that the steering wheel cover was not in place.

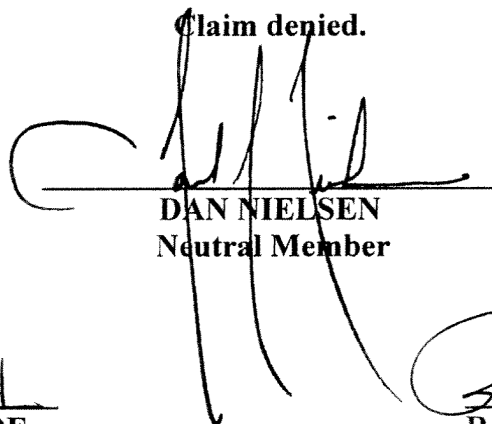
The Organization states that Claimant was not in violation of the applicable Engineering Instruction, as it requires that the truck driver place the cover over the steering wheel when the boom and outriggers are employed. Claimant, the Organization stresses, was not the truck driver, nor did he deploy a boom or outriggers on any truck on the day of the alleged violation. For these reasons, the Organization concludes, the claim should be sustained.

We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity which deprived Claimant of his right to a fair and impartial investigation. On the merits, this record presents the Board with two competing versions of events. First, there is no question that the investigation notice, Mr. Winans' testimony at the investigation and in the discipline letter all refer to a vehicle number which was not the number of the vehicle Claimant and Mr. Yarsulik were operating. However, Mr. Winans gave clear, consistent testimony that he personally observed that the vehicle in Claimant's vicinity was lacking a steering wheel cover, that he got into the vehicle to check, that Claimant immediately admitted that they had forgotten to put the cover on, and that Mr. Winans and the two employees went over to the vehicle where he showed them the missing cover. He also testified that they never told him that this was not their vehicle. Claimant and his co-worker gave a quite different account of the relevant events. However, as the Carrier asserts, it is well established that it is the province of the Hearing Officer, not this Board, to make credibility determinations, which should not be disturbed unless all of the record evidence convinces the Board that the determinations are unreasonable or unsupported by the record. There is no such showing here. The testimony of Mr. Winans is sufficient to prove Claimant's guilt by substantial evidence. The fact that Claimant may not have been the driver that day does not excuse his conduct, as all employees are responsible for operating safely and, according to Mr. Winans' testimony, Claimant recognized that he was responsible and questioned whether he could receive a "pass."

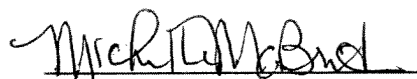
As for the penalty, placing the steering wheel cover on the wheel is obviously a serious safety matter, as the employees conceded that it was discussed repeatedly in job briefings and they "always" did it. The discipline assessed was consistent with the Carrier's PEPA and we cannot conclude that it was an unreasonable or excessive exercise of the Carrier's discretion to determine penalties.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



MICHELLE MCBRIDE
Carrier Member



R. C. SANDLIN
Organization Member

Dated this 30th day of July, 2012.