

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY

Case No. 466 – Award No. 466 – Claimant: Crutchfield
Carrier File No. 14-13-0411
Organization File No. 90-SF13C2-1366

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing September 5, 2013, when Claimant, Roy Crutchfield (0045674), was disciplined with a Level S 30-day Record Suspension with a 3-year review period when he allegedly had a collision with his hyrail vehicle and a civilian vehicle at MP 697.57 on a railroad crossing on September 5, 2013. The Carrier alleged violation of Maintenance of Way Operating Rule (MOWOR) 1.2.3 Alert and Attentive.
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 reinstated, if applicable, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing September 5, 2013, continuing forward and/or otherwise made whole.

FINDINGS:

Public Law Board No. 5850, 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, Roy Crutchfield, was hired by the Carrier in 2011. On September 13, 2013, the Carrier notified Claimant to attend an investigation to ascertain the facts and determine his responsibility, if any, in connection with his alleged collision with a civilian vehicle at MP 697.57 on a railroad crossing at grade, on September 5, 2013 at 1400 hours. The Notice stated that the investigation would determine possible violation

of Maintenance of Way Safety Rule (MOWSR) 1.2.3 Alert and Attentive, which requires that employees ensure that they are "alert and attentive when performing duties." Following the investigation, the Carrier found Claimant guilty of the misconduct alleged and issued him a Level S 30-day record suspension with a three-year review period.

Carrier Sherman, Texas Roadmaster Christopher David Vega testified at the investigation that on the day of the incident, Claimant called and informed him that he had been involved in an accident by coming into contact with a civilian vehicle at the crossing. He added that the police had been called and ultimately took reports. He stated that he was not able at that time to travel to the location.

Mr. Vega testified that Carrier Rules require an employee operating a vehicle to approach a crossing prepared to stop. He stated that Claimant had failed to be alert and attentive because he struck a vehicle.

Claimant testified at the investigation that at the time of the incident he was traveling northbound on the track, approaching the crossing. He had traversed this crossing many times and was very familiar with it.

Claimant explained that this was a one-way street, running east to west and, as he approached, he looked both ways, as is his habit. He then scanned back to the east, the direction from which traffic was approaching, but did not see the vehicle he eventually hit. Claimant stated that it must have been in his blind spot, but he did see other traffic behind that vehicle. He explained that school was letting out and the intersection was very busy.

Claimant added that he focused on the traffic behind the vehicle he eventually hit, timing it to see if he could make it across the crossing, and determined that he could. As he proceeded across the crossing he glanced back again and saw the other vehicle. He hit his brakes, but, he explained, the trucks only have about two inches of rubber on the rail, so he slid and almost stopped, but he did hit the other vehicle. He stated that if his vehicle had rail wheel brakes like the big trucks he could have stopped in time. He acknowledged that the type of vehicle he was operating does not have those brakes.

Claimant maintained that he was alert and attentive, but the vehicle was in his blind spot, and, although he saw it in time to hit the brakes, he still slid into the vehicle. He stated that he was approximately halfway through the crossing, which was three-lane, when he struck the vehicle. He acknowledged that Carrier Rules require him to approach a crossing prepared to stop and yield to right of way traffic, but he maintained that he had done so and simply had an accident.

Claimant's personal record shows no previous discipline.

The Carrier asserts that this case is not complicated, as Claimant's Roadmaster testified that Claimant, in his hyrail vehicle, struck a civilian vehicle at a road crossing. More importantly, Claimant admitted that the civilian vehicle was in his blind spot and

by the time he saw it he hit the brakes but was unable to stop before hitting the vehicle. The Carrier states that it is well-established that such an admission is sufficient to satisfy the Carrier's burden of proving Claimant's guilt by substantial evidence, and the Board should give no credit to the Organization's numerous excuses and assertions that Claimant should not be held accountable. With respect to the penalty, the Carrier states that it was appropriate given the seriousness of the violation and Claimant's personal record and was properly assessed in accordance with its Policy for Employee Performance Accountability (PEPA). The Carrier urges that the claim be denied.

The Organization disputes the Carrier's contention that Claimant was not alert and attentive in the performance of his duties. The Organization notes that Claimant was approaching a one-way street, so traffic would come from the east, and as he approached the crossing there was no immediate traffic and Claimant observed only traffic off to the east. Therefore, the Organization states, Claimant rolled up to the crossing slowly, considered the safety of the approaching traffic, and determined he could make it across the crossing. However, as Claimant testified, the civilian vehicle approached from his blind spot and although he immediately braked, the hyrail vehicle's insufficient braking system did not prevent him from bumping the vehicle.

The Organization maintains that the incident could have been avoided if the hyrail had an improved braking system. The Organization notes that Claimant is very familiar with this crossing and, as his testimony indicates, he is always alert and cognizant of safety concerns. The Carrier, the Organization argues, has presented nothing to indicate that Claimant is guilty of any violations warranting discipline, and has failed to meet its burden of proof. Even if it had, the discipline is extreme and excessive in proportion to the charges. The Organization urges that the claim be sustained.

We have carefully reviewed the record in its entirety. There is no dispute that Claimant, while traversing a crossing, hit the civilian vehicle as alleged. The only issue is whether the Carrier has proven, by substantial evidence, that this incident was the result of a failure to be alert and attentive. We find that the Carrier has met its burden of proof.

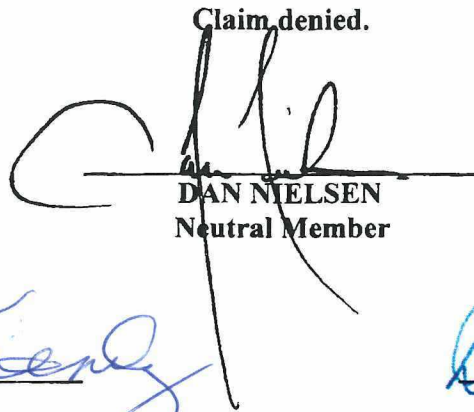
The record shows that Claimant was very familiar with his equipment as well as the crossing at issue. His attempt to blame the incident on his braking system is weak, as his vehicle was equipped with the standard brakes for that type of equipment, and it was his responsibility to operate the vehicle accordingly.

In addition, Claimant acknowledged that the intersection was very busy. He admitted that he saw traffic approaching, but made the decision that he could beat it across the intersection. As for his assertion that the vehicle he ultimately hit was in his blind spot, he should have been aware of his vehicle's blind spot and have taken extra caution to check it before proceeding. The fact that he made it halfway across before he noticed the vehicle is strong evidence that he was not sufficiently cautious. That the brakes with which he drove every day did not prevent the collision is his fault, not the system's. The Carrier has proven his guilt by substantial evidence. Failure to exercise

sufficient caution to prevent a collision is a serious offense. We find no reason to overturn the discipline deemed appropriate by the Carrier.

AWARD

Claim denied.

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DAN NIELSEN
Neutral Member

A handwritten signature in blue ink, appearing to be 'Joy Mendez', is written over a horizontal line.

JOY MENDEZ
Carrier Member

A handwritten signature in blue ink, appearing to be 'David Scoville', is written over a horizontal line.

DAVID SCOVILLE
Organization Member

Dated this 9th day of June, 2016.