

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 492 -- Award No. 492 -- Brantner

Carrier File No. 14-15-0167

Organization File No. 210-SF13S1-154

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing March 25, 2015 when Claimant, James D. Brantner (1565027), was disciplined with a Level S 30-day Record Suspension with a 3-year review period for his alleged failure to wear a seat belt while operating a BNSF vehicle on February 2, 2015 while working a Foreman position headquartered at Pearland, Texas. The Carrier alleged violation of Maintenance of Way Safety Rule (MOWSR) 12.5 Seat Belts and MOWSR 14.1.2 Seat Belts.

2. As a consequence of the violation referred to in part 1 the Carrier shall remove from Claimant's record this discipline and paid for all wage commencing March 25, 2015, 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, Stephen H. Brantner, has been employed by the Carrier since 2003. On February 6, 2015, the Carrier notified Claimant to attend an investigation to ascertain the facts and determine his responsibility, if any, in connection with his alleged failure to wear a seat belt while operating a Carrier vehicle, in violation of MOWSR 12.5 Seat Belts and MOWSR 14.1.2 Seat Belts. The Carrier stated that its first knowledge of the alleged

violation was February 3, 2015. Following the investigation, the Carrier found that Claimant had committed the misconduct alleged, and assessed him a Level S 30-day record suspension with a three-year review period.

Carrier Roadmaster Patrick McAleese testified at the investigation that on the day at issue he was notified of a DriveCam alert that the driver of a Carrier vehicle was not wearing his seatbelt while the vehicle was moving. Three still shots from the DriveCam video are included in the hearing record.

Claimant testified at the investigation that on the day at issue he was running the Form B for a tie gang and at the time noted on the video would have been placing flags. He acknowledged that he could not see a seatbelt in the two shots. He stated that he would have been able to see the seatbelt unless it was under his jacket. He added, however, that he did not know if it was under his jacket, but he could demonstrate how it possibly could get there.

Claimant maintained that he normally wore his seatbelt. He stated that in the video he was wearing a big heavy jacket, and could not say for sure that he was not wearing his seatbelt. When asked if he had violated the applicable Carrier Rules, he responded that he was not sure.

The Carrier asserts that that Claimant's violation is clear. It notes Claimant's admission that he could not see a seatbelt on the DriveCam shot, and he would have been able to see it unless it was under his jacket. However, Claimant stated that he did not know whether it was under his jacket, but could demonstrate how that could happen. While Claimant maintained that he always wears his seat belt, the Carrier states, he responded that he was "not sure" to questions as to whether he violated the applicable Carrier Rules. An employee who always wore his seatbelt, the Carrier states, would deny that he violated any Rules. The Carrier argues that it has met its burden of proving Claimant's guilt by substantial evidence. As for the penalty, Claimant committed a serious violation, and the discipline assessed is commensurate with that violation warranted by his personal record. It cannot be deemed excessive or arbitrary.

The Organization asserts that the video shots do not clearly establish whether Claimant was wearing his seat belt or not. The Organization points out that he was wearing a big coat at the time, and the seat belt could have gotten under the jacket. The Organization notes Claimant's statement that he always wears his seat belt. The Carrier, the Organization states, had the burden of proving that Claimant failed to wear his seat belt, and did not do so. Therefore, it has failed to meet its burden of proof. Even if it had, the penalty assessed was extreme, unwarranted and unjustified.

We have carefully reviewed the record in its entirety. Claimant does not dispute that he is in the individual in the DriveCam video shots presented at the hearing. As all parties present at the investigation, including Claimant, acknowledge, no seat belt is visible in those shots. While Claimant maintained that he usually wears his seatbelt, his explanation that it "could" have traveled under his jacket is not convincing. Indeed,

Claimant did not seem particularly convinced that he was wearing his seat belt on this occasion, as he stated that he was "not sure" whether he had complied with the Rules requiring seat belt use.

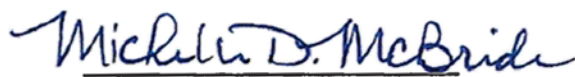
The evidence that Claimant was not wearing his seat belt is far more substantial than his speculation that the seatbelt could, for some reason, just not be visible. The Carrier has met its burden of proving his guilt by substantial evidence. As for the penalty, failure to wear a seatbelt while driving is a serious offense, one which substantially increases the possibility of injury. We therefore cannot say that the penalty determined appropriate by the Carrier represents an unfair, arbitrary or discriminatory exercise of its discretion to assess discipline.

AWARD

Claim denied.

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DAN NIELSEN
Neutral Member

A handwritten signature in blue ink, appearing to read "Michelle D. McBride", written over a horizontal line.

MICHELLE McBRIDE
Carrier Member

A handwritten signature in blue ink, appearing to read "David Scoville", written over a horizontal line.

DAVID SCOVILLE
Organization Member

Dated this 21 day of August, 2017.