

**PUBLIC LAW BOARD NO. 5850**

---

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY**

---

Case No. 493 – Award No. 493 – Claimant: McLaurin  
Carrier File No. 14-15-0157  
Organization File No. 210-SF13C2-155

---

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing January 23, 2015, when Claimant, Corey D. McLaurin (1752393), was unjustly treated following his disqualification as a Group 7 Class 1 (G7C1) Machine Operator by letter dated March 16, 2015 following investigation held on February 17, 2015.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove Claimant's G7C1 disqualification and he be compensated at his applicable rate for all time lost, straight time and overtime and expenses incurred as a result of the Carrier's actions commencing January 23, 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, Corey D. McLaurin, has been employed by the Carrier since 2007. On January 23, 2015, the Carrier issued Claimant a disqualification letter which provided:

Effective immediately you are disqualified of Machine Operator Rights (G7C1) for your alleged failure to properly maintain tamper X05400439 to which you were operating in Louisiana resulting in approximately \$46,000 worth of damage.

On March 16, 2015, following an unjust treatment hearing, the Carrier issued a letter informing Claimant that his disqualification from G7C1 machines would be upheld. The record also includes an Investigation Notice, dated January 12, 2015, charging Claimant with a violation of Maintenance of Way Operating Rule (MOWOR) 1.6 Conduct in connection with the same incident which led to his disqualification, and a letter dated January 19, 2015, cancelling the hearing in its entirety.

On or about December 18, 2014, Claimant was working on a production tamper; he had operated the machine since 2009. The transmission dropped, and Claimant and his foreman, Ryan Lohr, contacted Carrier Traveling Mechanic Robert Jones for information on how to proceed.

Mr. Jones testified at the investigation that he was working with several backhoes and other support equipment in the Lafayette Yard in Louisiana when he got this call, and, since he was more than an hour away, he told the crew, Claimant and the regulator operator, to cage the brakes and put a tow bar on the machine and he would meet them at the tie-up location, Ziegler Spur. He explained that when the engine is shut down, the brakes have to be manually caged, because when the machine loses air the brakes automatically set up. He added that if there is a hydraulic failure, shutting off the motor will stop the continuous cycling of hydraulic oil through the system. He stated that there was urgency to get the machine off the main line.

Mr. Jones worked on the machine over the next few days, as he detailed in his hearing testimony and an email he sent to Rick McNichols, Carrier Supervisor of Roadway Equipment at the time. Ultimately, it was determined that the machine had sustained \$46,000 of damage.

When he first inspected the machine the day after it was towed, he checked the transmission and that the machine was locked and tagged, and that there was no air on it. He testified that he did not know if the brakes had been caged when the machine was first towed off the main line. The bolt was gone, so the transmission was being held by two hydraulic hoses, and one was ripped apart. He had to undo what was left of that coupling and put a cap on the motor, and then put a cap on the other end. When he crawled under the machine he did not observe any hydraulic oil. He repaired the bolt, got the transmission back up and stabilized, and tagged the machine out of service.

He installed new hoses a few days later, after the holiday. When he checked the oil and hydraulic tank, there was no oil in the sight glass so he could not start the machine. He and a foreman added hydraulic oil but it was still not visible in the sight glass and so the machine had to be towed to Morgan City.

Mr. Jones was informed by employees there that extra fuel had been added to the machine, and it was cranked and then turned off. He traveled to Morgan City; a foreman had put oil in, and it was in the middle of the sight glass when he arrived. He cranked the machine and it began pulsating, which he had not experienced before, and he shut the

machine off after about two minutes because he did not understand why that was happening. He then noticed the oil was out of the sight glass.

Mr. Jones explained that the hydraulic expert told him that pumps would run without oil, but when they do there is metal to metal and they will self-destruct. He did not know why all the oil was coming out of the machine, but he explained that if hydraulic oil is lost through the pumps it can cause extensive damage. He stated that the blown hose could have caused it. There were no leaks he could see. He added that all of these pumps and motors had been replaced about a year earlier.

Mr. Jones further testified that when he pulled the pumps out, they lacked oil and there was no noticeable oil in the coupling drives, which had 90 weight oil from the pump drive to the seal. He stated that a seal was defective, and perhaps got too hot. When the 90 weight oil started leaking out, it was very dark red, almost like grease. He had never seen this situation before.

In his e-mail to Mr. McNichols, Mr. Jones offered no opinion as to what had caused the damage to the machine. When he was asked by the Hearing Officer if extensive damage would be caused by failing to cage the brakes and shut off the equipment for towing, especially with the blown hose, Mr. Jones replied that damage will be caused any time hydraulic oil is lost through the pumps.

Mr. McNichols testified at the investigation that he was responsible for the machine at issue, and communicated with Mr. Jones about how to handle the situation that developed on December 18, 2014. In a response to Mr. Jones' e-mail, Mr. McNichols stated, "Sounds to me like the operator did not cage the brakes and tow the machine to the tie up location as instructed, running the machine out of hydraulic oil with major damage to the machine." At the hearing, Mr. McNichols stated that it was apparent the machine had been run without hydraulic oil, destroying five pumps and two motors, as well as the gear box. He stated that he believed the damage was avoidable. He did not know whether Claimant had caged the brakes. The only information he had was what had been relayed by Mr. Jones.

Claimant testified at the investigation that at the time of the incident the pin that held the transmission on his machine broke, and the Foreman, Ryan Lohr, told him they would tow the machine to the hole, or tie-up location. He stated that he left the machine running as they towed it. Claimant stated that he is not a mechanic and knows nothing about caging brakes. He stated that he did not know that could cause extensive damage; he simply did what the Foreman told him. He did not challenge the Foreman's decision to drag the machine and not cage the brakes; the Foreman told him the mechanic said to do it that way.

Claimant stated that he had never seen a pin break like that. When it did, he saw some hydraulic fluid on the ground. He heard a loud pop as they were traveling back to the hole. They drove slowly, so the other hose would not be damaged and the transmission would not fall to the ground.

The Carrier first notes that Claimant was not disciplined. He was disqualified, and lost no compensation, so there are no monetary damages. All procedural requirements, the Carrier states, were met.

On the merits, the Carrier states that the investigation demonstrated that Claimant was properly disqualified, as, due to his negligent operation of a Production Tamper, the machine sustained extensive damage. The Carrier points to the testimony of Mechanic Jones that he instructed Claimant how to travel the machine, but Claimant failed to follow his instructions, resulting in the damage at issue. The Carrier also points to the testimony of Supervisor of Roadway Equipment McNichols that Claimant was responsible for the damage to the machine.

The Carrier notes that where there is conflicting testimony, as there was in this case, the Board must defer to the Hearing Officer's credibility determination to credit the Carrier's witnesses and discredit Claimant. The Carrier urges that it properly disqualified Claimant because he demonstrated he lacked the ability to operate the machine.

The Organization states that the hearing testimony and exhibits clearly establish that Claimant was treated unjustly when the Carrier disqualified him for allegedly failing to maintain his tamper properly and causing \$46,000 damage to the machine. The Organization notes that on December 18, 2014, Claimant was traveling when the bolt broke and the transmission dropped. The Organization adds that Claimant immediately stopped and assessed the situation, informed Foreman Lohr, who was with him, and Foreman Lohr contacted Mechanic Jones. The Foreman, the Organization adds, instructed Claimant to attach the tow bar, and they towed the machine 15 miles to their tie-up location. The Organization points out that Claimant did not speak directly to the mechanic; all communication was through the Foreman.

The next day, the Organization continues, Claimant was performing maintenance on the machine when the mechanic arrived. The Organization explains that the mechanic repaired the broken bolt and left to purchase new hoses. This, the Organization stresses, was the last day Claimant worked on this machine, as he then went on vacation for the Christmas holiday, and when he returned he was bumped/displaced from this machine and assigned to another machine at another location.

The Organization stresses that another employee was assigned to the machine at issue on December 29, 2014, and Claimant never worked on it after December 19, 2014. It was not, the Organization adds, until January 5, 2015 that the Carrier noted problems with the machine. This was, the Organization states, 17 days after Claimant last worked on the machine and numerous people were involved with it during that time.

There is, the Organization argues, no merit to the Carrier's contention that Claimant was responsible for the \$46,000 damage to the machine, and he has clearly been treated unjustly. On December 19, 2014, the Carrier was aware of the broken bolt, which was repaired, and the broken hose that resulted from the transmission dropping. Any other

damage, the Organization asserts, occurred after Claimant vacated the machine. Indeed, the Organization states, Mechanic Jones said other foremen who worked on the machine knew there was not enough fluid in it, and this negligence could have caused the damage.

The Organization concludes that the Carrier has simply not proven that Claimant damaged the machine, and he was the victim of the Carrier's need to blame someone. The Organization concludes that Claimant committed no offense for which he should have been disqualified. This was clearly unjust treatment, and the Carrier's decision is arbitrary, excessive and unwarranted.

The Board has carefully reviewed the record in its entirety. As the Carrier states, the question in a disqualification proceeding is whether the employee possesses the skills and ability to perform the job. The Carrier urges that it properly disqualified Claimant because he demonstrated he lacked the ability to operate the machine. The record does not support that conclusion. At the time of the incident, he had operated the machine for six years, apparently without incident. The disqualification letter stated that Claimant had "failed to maintain" the tamper, but there is no evidence that there had ever been such issues. Basically, there is nothing in this record to support any conclusion other than that Claimant had been a perfectly good tamper operator.

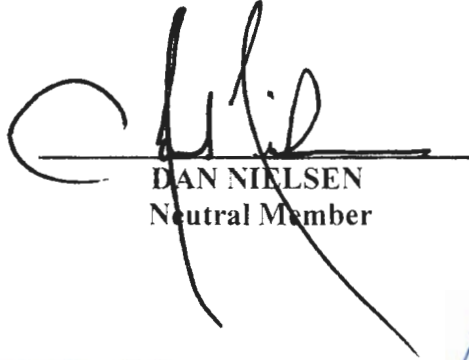
This disqualification proceeding was motivated by the extensive damage sustained by Claimant's machine. Mr. Jones, the only Carrier witness with first-hand knowledge of the incident, did not testify to the conclusion the Carrier urges, that the damage was caused by Claimant's failure to cage the brakes. Even if that were the case, this incident was an unusual one, and no one contradicted Claimant's testimony that as he was not a mechanic, he was not familiar with whether brakes should be caged or not when the machine is to be towed. There was nothing to indicate that this was a regular part of Claimant's job duties.

Rather, this is a case of whether Claimant followed Mr. Jones' instructions to cage the brakes. Mr. Jones testified that he told Claimant and the regulator operator to do so; Claimant testified that he did not speak to Mr. Jones, and that all of the communication was through Foreman Lohr, and Foreman Lohr did not instruct him to cage the brakes. Foreman Lohr did not testify at the investigation, but it is clear that he was present at the scene and presumably would have at least had some input on how to proceed.

In any event, the heart of this matter, the failure to follow instructions, is a disciplinary matter, not a question of qualification, and the record does not support the Carrier's position that Claimant lacked the qualifications to maintain and operate the machine. The disqualification will be overturned, Claimant's Group 7 Class 1 seniority date will be re-instated. The parties are directed to meet and confer over the question of making Claimant whole for his losses, if any.

**AWARD**

**Claim sustained. The Carrier is directed to comply within 45 days.**

A handwritten signature in black ink, appearing to read 'Dan Nielsen', written over a horizontal line.

**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.**