

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 506 – Award No. 506 – J. Aguilera

Carrier File No. 14-18-0624

Organization File No. 2417-SL13S1-1894

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Julio Cesar Aguilera (1668672), for the removal of the Claimant's Dismissal for the violation of MWOR 6.50 Movement of On-Track Equipment and MWOR 1.1.2 Alert and Attentive. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's actions.

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, J.C. Aguilera, had been employed by the Carrier since 2005. On October 11, 2018, following an investigation, the Carrier found Claimant guilty of failure to remain alert and attentive when he failed to stop his regulator within half the range of vision short of the tamper at approximate MP 222.50 on the Gallup Subdivision on September 13, 2018. The Carrier dismissed him from service.

The facts of this case are not in dispute. At the relevant time, Claimant was a Machine Operator assigned to the ballast regulator on Surfacing Gang TSCX1111 headquartered in Holbrook, Arizona. He and his co-worker, Tamper Machine Operator Brett Hardy, were traveling their machines from Chambers to Joe City while their Foreman, Anthony Gallegos, obtained the

necessary track authorities and protection for them to safely do so. Claimant acknowledged at the investigation that Mr. Hardy, who was traveling in front of the Claimant, radioed that he was preparing to stop at Bibo to wait for additional authority from Foreman Gallegos to proceed. Claimant acknowledged that transmission.

Claimant explained that he then throttled his machine down to about 10 to 12 miles per hour, and, looking out the window, saw that Mr. Hardy's machine was still quite a bit ahead of him. Claimant was thirsty, so he reached down into his machine to open a case of water. By the time he grabbed the water, and looked back, he had made impact with the other machine.

Roadmaster Kelli Schlais testified at the investigation that Claimant called and informed him of the collision, and, when he arrived on the scene, Claimant told her he had heard, and acknowledged, Mr. Hardy's transmission that he was coming to a stop, and then that he was stopped. Claimant maintained at the investigation that he acknowledged the tamper was coming to a stop, but he did not remember that Mr. Hardy stated he had actually stopped, as it was just too loud in the machine. Claimant acknowledged that Maintenance of Way Operating Rules required him to be alert and attentive, and that he be able to stop within half the range of vision short of the equipment in front of him.

Mr. Hardy submitted a statement that he hit the dashboard hard when his machine was struck, and the equipment sustained more than \$150,000 damage. There were also resulting train delays as it took approximately three hours to clear the track.

Claimant admitted that the incident was serious and could have resulted in severe injury. He stated that if he had it to do over he would have stopped the machine completely to get the bottle of water.

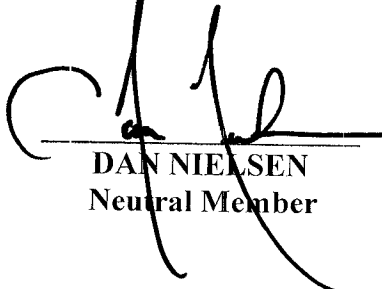
There is no dispute about Claimant's culpability in this matter, as he admitted that he looked down into his machine to open a case of water bottles, resulting in his machine hitting the tamper in front of him. He acknowledged that his actions violated applicable Carrier Rules.

It is well established that such admissions are sufficient to satisfy the Carrier's burden of proof, and the Organization does not argue that Claimant was innocent of misconduct. Rather, it points out that he was honest and accepted responsibility for the incident, and is a good employee with 13 years' service.

Nevertheless, as Claimant acknowledged, this was a serious safety violation which caused significant property damage and delay, and could well have resulted in severe injury to the employees. The Carrier's Policy for Employee Performance and Accountability (PEPA) identifies this sort of incident as a stand-alone dismissible event, as it involved a rule violation that could or does result in a serious collision or derailment, serious injury to another employee or the general public, fatality, or extensive damage to Carrier or public property. In addition, Claimant's personal record shows two other serious safety violations in 2016 and 2017, as well as several earlier incidents. There is nothing to demonstrate that the Carrier's decision to dismiss Claimant represented an unfair, arbitrary or discriminatory exercise of its discretion to determine the appropriate disciplinary sanction.

AWARD

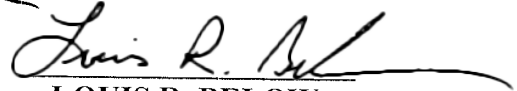
Claim denied.



DAN NIELSEN
Neutral Member



SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.