

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 511 – Award No. 511 – J. Kebort

Carrier File No. 14-19-0005

Organization File No. 2409-SL13S1-1897

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Carrier file # RDV-MOW-2018-01876, Jeff Kebort (1752526) Seniority date July 16, 2007 for removal of Level S, Actual Suspension from September 19, 2018 to November 01, 2018, in addition to a Three (3) year review period, with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for: 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service. 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed, had the Claimant not been suspended. 4) health, dental and vision care insurance premiums, deductibles and copays that he would not have paid had he not been unjustly withheld from service commencing September 19, 2018, continuing to November 01, 2018 and/or otherwise made whole. All notations of the discipline should be removed from all Carrier records.

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. Kebort, has been employed by the Carrier since 2007. On October 31, 2018, the Carrier found Claimant guilty of, on September 19, 2017, failing to maintain a safe braking distance while operating the regulator, resulting in a machine collision with a tamper. The Carrier assessed him a Level S 36-day actual suspension with a three-year review period.

The underlying facts of this case are not in dispute. At the time of the incident, Claimant was assigned to surfacing gang TSCX0230, a three-man gang consisting of a G3C1 Foreman, a G7C1 Tamper Machine Operator, and a G7C2 Ballast Regulator Machine Operator (Claimant). They were operating on the Wichita Falls Subdivision. Michael Mellenthin was operating the tamper ahead of Claimant. They were proceeding westward.

This case involves alleged violations of Carrier Maintenance of Way Operating Rules (MOWOR) 6.51, Maintaining a Safe Braking Distance, and 6.52, Spacing of On-Track Equipment, which require on-track equipment operators to maintain specific distances between equipment when moving and to ensure they have enough distance to be able to stop safely. At the time of the incident, Claimant was operating his machine in reverse, with the controls on the machine's east side, so that he must turn in his seat to observe what is in front of him. He explained at the investigation that he operates in this manner at least half the time. The machine has rear view mirrors, through which he could see the tamper in front of him even when he was facing in the opposite direction. Claimant testified he takes the fact that he is traveling in reverse into consideration when determining spacing for safe braking distances.

Just prior to the incident, both machines had stopped on the east side of a crossing, and had communicated that to one another as required. Claimant stated at the investigation that he was then approximately 40 feet behind the other machine. He maintained that a rule allowed him to maintain that distance when stopped, but no such rule was identified at the investigation.

Both then proceeded westward through and past the crossing. Claimant stated at the investigation that he was in transition mode at the time and, required, pursuant to MOWOR 6.51, to maintain 50 feet between himself and the tamper in front of him. He explained, however, that as he was transitioning to travel mode, which requires 300 feet of distance, they were more than 50 feet apart.

Approximately 150 feet past the crossing, Mr. Mellenthin stopped again, apparently to finish copying a track authority. He did not communicate, on the radio, that he had stopped. When Claimant looked westward, he saw that the tamper was stopped.

Claimant was unable to stop and collided with the stopped tamper. There were no injuries, but the collision did cause significant damage to one of the machines. In a statement he provided following the incident, Claimant acknowledged that he could not stop quickly enough to avoid the collision. He stated that both he and Mr. Mellenthin were required to follow certain rules, Mr. Mellenthin to announce his stop and himself to maintain a safe braking distance.

The Organization argues that this incident was the fault of Mr. Mellenthin, not Claimant, as he failed to communicate his intent to stop. However, as he acknowledged at the hearing, Claimant was required to maintain a minimum distance of 50 feet between his machine and Mr. Mellenthin's while transitioning into travel mode after going through the crossing, and it was also his responsibility to maintain a safe braking distance between his vehicle and Mr. Mellenthin's. While Claimant stated, at the investigation, that he had maintained the required 50 foot spacing, it is apparent that he did not keep sufficient distance to stop safely, even if Mr. Mellenthin failed to give proper notice that he had stopped his machine. The Carrier has proven his guilt by substantial evidence.

As for the Organization's contention that the discipline was excessive and unwarranted, this was a serious violation which could have resulted in far more serious consequences. The discipline was assessed in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA), and we see no reason to disturb it.

AWARD

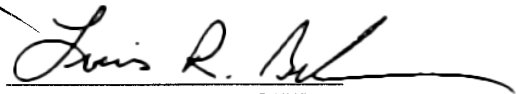
Claim denied.



DAN NIELSEN
Neutral Member



SAMANTHA DAIGLE
Carrier Member



LOUIS R. BELOW
Organization Member

Dated this 9th day of June, 2021.