

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 517 – Award No. 517 – K. Jimenez
Carrier File No. 14-19-0166
Organization File No. 2418-SL13S1-1911

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Kenneth Jimenez, (6581227), for the removal of the Claimant's Dismissal for Violation of MWSR 14.1.2 Seat Belts. 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, K. Jimenez, had been employed by the Carrier since 1980. On April 8, 2019, the Carrier found Claimant guilty of failing to wear his seat belt while attempting to back up a vehicle A8538 at the Redlands, California Maintenance of Way facility on February 11, 2019. The Carrier determined that Claimant had violated Maintenance of Way Safety Rule (MOWSR) S-14.1.2 Seat Belts, and dismissed him from service.

At the time of the incident, Claimant was working as a Trackman/Flagman and operating a Company vehicle inside the Carrier's Redlands warehouse when he backed into a pole, triggering the DriveCam unit in the truck to record an event. Still shots from the video were entered into the investigation record.

At the investigation, Carrier Roadmaster Phillip Smith testified that he reviewed the DriveCam video, and it was clear that Claimant was operating a Company vehicle without wearing a seat belt. When Mr. Smith was questioned about a line extending across the left side of

Claimant's body, Mr. Smith explained it appeared to be a graphic on Claimant's shirt. He stated that it was too low on the body, and not continuous, and therefore could not be a seat belt. No seat belt is visible in the still shots from the Drive Cam.

Claimant testified at the hearing that he understood MOSWR S-14.1.2 and confirmed that he was the person seen in the photos operating the Company vehicle. He stated that he was uncertain as to whether he was wearing his seat belt, testifying he "thought [he] had [his] seat belt on," that it was "cutting into [his] arm," that it looked like he had the seat belt tucked under his arm, that he was "not sure" whether he had a seat belt on, and that he "grabbed it and thought [he] hooked it" before backing up. When asked why he did not know if his seat belt was on, Claimant explained he only had to back up a few feet.

Claimant previously received a Level-S 30-day Record Suspension with a one-year review period on August 10, 2016, for failing to conduct a thorough job safety briefing, which resulted in a third-party contractor nearly being struck by an oncoming train. On October 12, 2018, Claimant received a Level-S 30-day Record Suspension with a three-year review period for failing to use a seatbelt while operating a Company vehicle.

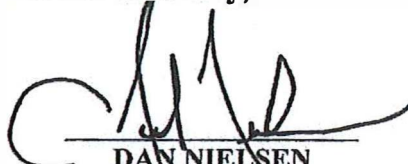
The Carrier asserts that it has provided substantial evidence of Claimant's violation, including screenshots of Claimant operating a Company vehicle without wearing his seatbelt. The Carrier asserts that the line seen across Claimant's shirt in the screenshot is merely a graphic, not a seatbelt. The Carrier also highlighted Claimant's back-and-forth testimony regarding whether he had the seatbelt on or whether he had forgotten. The Carrier asserts that it has proven Claimant's guilt by substantial evidence, and given his record and the seriousness of the violation, the claim should be denied.

The Organization contends that the fact the seat belt cannot be seen in the photos is not proof that Claimant does not have the seat belt on, and that this should not be grounds for dismissal. The Organization notes Claimant's testimony that the seatbelt was cutting into his arm and that he thought he had it on. Even if he was not wearing the seat belt, he only backed the vehicle up a few feet and, the Organization maintains, Claimant's dismissal was extreme and unwarranted. The Organization urges that the claim be sustained.


This Board has carefully examined the record in its entirety. On the basis of that examination, we conclude that the Carrier has met its burden of proof to establish that the Claimant was guilty of not wearing his seatbelt. On the specific facts of this case, however, we also conclude that the penalty assessed is disproportionate to the offense and the Claimant's overall record. For this reason, we have directed that he be reinstated, without back pay or other monetary benefit, but without any loss of seniority or credit for service, on a last chance basis.

AWARD

Claim denied in part and sustained in part. Claimant shall be reinstated, without backpay, but without loss of seniority, on a last chance basis.


DAN NIELSEN
Neutral Member


LOGAN McKENNA
Carrier Member


JEFFERY L. FRY
Organization Member

Dated this 16 day of May, 2023.