

**PUBLIC LAW BOARD NO. 5850**

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**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY COMPANY**

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Case No. 521 – Award No. 521 – K. Jimenez  
Carrier File No. 14-19-0165  
Organization File No. 2418-SL13S1-1910

**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 Standard Formal Reprimand and One Year Review Period for Violation of MWSR 12.8 Backing. 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, has been employed by the Carrier since 1980. On April 9, 2019, following an investigation, the Carrier found Claimant guilty of failing, on February 11, 2019, to safely operate a Carrier leased vehicle A8538, resulting in bumper damage to the vehicle. The Carrier determined that Claimant had violated Maintenance of Way Safety Rule (MOWSR) S-12.8 Backing and assessed Claimant a Standard Formal Reprimand with a one-year review period.

The facts of this case are undisputed. At the time of the incident, Claimant was working as a Trackman/Flagman on the San Bernardino Subdivision. Claimant had parked the vehicle inside the Carrier's Redlands warehouse. Claimant admitted that he failed to inspect behind the vehicle for obstructions before backing out of the parking space. He further admitted to having backed into a pole. The vehicle sustained damage to the rear bumper.

Claimant previously received a Level-S 30-day Record Suspension with a one-year review period on May 10, 2012, for backing a Company vehicle into a welding truck and causing damage. On August 10, 2016, Claimant received a Level S 30-day Record Suspension with a one-year review period for failing to conduct a thorough job safety briefing and failing to protect his fellow workers and equipment, which resulted in a worker almost being struck by an oncoming train. On October 12, 2018, he received a Level-S 30-day Record Suspension with a three-year review period for failing to wear a seatbelt while operating a Company vehicle.

The Carrier argues that it has met its burden of proving by substantial evidence that Claimant violated MOWSR S-12.8, which requires employees to “inspect areas to the rear to verify that no persons or obstructions are in the path of movement” before backing up. He admitted his conduct, and that is sufficient to satisfy the Carrier’s burden of proving his guilt by substantial evidence.


The Organization does not dispute the fact that Claimant backed into the pole, but asserts that the Carrier already disciplined Claimant by instructing him after the accident not to drive any Carrier vehicles and to report to the Redlands Section Gang instead.

We agree that the Carrier has satisfied its burden of proving Claimant’s guilt. Claimant admitted that he failed to ensure there were no obstructions behind the vehicle before backing up and admitted to striking the pole. It is well settled that such admissions are sufficient to satisfy the Carrier’s burden of proof.

Under the Carrier’s Policy for Employee Performance and Accountability (PEPA), an employee is subject to dismissal for any additional serious violation committed within a review period, which Claimant was. The claim that the adjustment to his work assignment was an act of discipline is not established in the record. The Carrier’s assessment of a Standard Formal Reprimand was well within its disciplinary discretion, and we see no reason to overturn it.

AWARD

Claim denied.

  
DAN NIELSEN  
Neutral Member

  
LOGAN McKENNA  
Carrier Member

  
JEFFERY LERY  
Organization Member

Dated this 16 day of May, 2023.