

**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. 522 – Award No. 522 – A. Edwards  
Carrier File No. 14-19-0168  
Organization File No. 2409-SL13C5-197

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Carrier file # RDV-MOW'2019-00377, Andre Edwards (1754654) Seniority date August 20, 2007 for with removal of Level S, Actual Suspension from February 05, 2019, through March 28, 2019, 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 co-pays that he would not have paid had he not been unjustly withheld from service commencing March 28, 2019 through April 26, 2019 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, A. Edwards, has been employed by the Carrier since 2007. On February 15, 2019, the Carrier issued Claimant a Notice to attend an investigation on February 27, 2019 “for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged unauthorized use of a company vehicle for personal use and commuting.” The Carrier asserted first knowledge of this alleged violation on February 13, 2019.

On March 27, 2019, following the investigation, the Carrier found Claimant guilty of using a Company vehicle for personal use and commuting without authorization. The Carrier determined that Claimant had violated VPR 1.0 Company Policy Corporate Vehicle and Maintenance of Way Operating Rule (MOWOR) 1.6 Conduct and assessed him a Level S 30-day Actual Suspension with a three-year Review Period.

The Organization asserts, and argued at the opening and throughout the investigation, that the Carrier denied Claimant his right to a fair and impartial investigation, as required by Rule 13(a) Investigations of the parties’ South Agreement. In particular, the Organization urges that the investigation notice was defective, as it did not give Claimant and the Organization sufficient notice of the charges against him to enable them to prepare an adequate defense.

We agree. The Notice charges Claimant with “unauthorized use of a company vehicle for personal use and commuting.” It does not indicate the dates, times, locations, or any other information concerning the asserted violations. At the hearing, the Carrier attempted to establish, primarily from fuel and GPS records, that Claimant had committed numerous infractions many weeks earlier, and it was apparent that he could not, without prior opportunity to refresh his memory, review calendars, credit card receipts or the like, adequately recall or explain enough of the incidents to defend himself against the allegations. The inadequacy of the investigation is highlighted by the fact that at the end, even in the discipline assessment letter, the Carrier failed to identify a single specific violation, simply repeating the general assertion that Claimant had violated its Rules.


The Carrier failed to comply with a basic requirement that it give an employee accused of misconduct a fair chance to defend himself. The claim will be sustained on that basis.

**AWARD**

Claim sustained. The Carrier shall remove all mention of the instant discipline from Claimant's personal record and shall make him whole for all losses suffered in connection therewith. The Carrier shall comply with this Award within 45 days.

  
DAN NIELSEN  
Neutral Member

  
LOGAN McKENNA  
Carrier Member

  
JEFFERY L. FRY  
Organization Member

Dated this 16 day of May, 2023.