

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 526 – Award No. 526 – L. Tsabetsaye
Carrier File No. 14-19-0281
Organization File No. 2417-SL13D3-192

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Levon Tsabetsaye EMP ID 1159771, Seniority Date 05-31-1997 for the removal of the claimants Disqualification. In addition, we request all record of this Disqualification be removed from the Claimants record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s).

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, L. Tsabetsaye, has been employed by the Carrier since 1997. On June 18, 2019, the Carrier disqualified Claimant as Foreman due to his failure to properly perform his job duties and his failure to properly prescribe remedial action according to Company guidelines. The Organization requested a hearing that same day.

On June 13, 2019, a detection car on the Gallup Subdivision reported a defect at Milepost 208.972 on Main 1. Tier 2 qualified employees, which includes Foremen, are required to place a slow order under the Company's Engineering Instructions. Claimant placed a slow order for 10 miles per hour but placed the slow order one mile away from the detected defect from Milepost 209.8 to 210. Roadmaster Kelli Schlais testified that when she called Claimant to ask about the slow order, he acknowledged his mistake.

Roadmaster Jason Baiamonte testified that failure to properly protect a defect could be catastrophic, potentially resulting in a broken rail and injuries. He further testified that he spoke with Claimant about a similar incident a few days prior to June 13, 2019, wherein he explained to Claimant what he did wrong and how to prevent it from happening in the future.

The Organization argues that Claimant was unjustly disqualified for an incident occurring on June 18, 2019, but the Carrier presented evidence for incidents occurring several days earlier. Because Claimant has been a Foreman for several years, the Organization contends, simply marking down the wrong milepost for defect protection should not disqualify him from that position.

As an initial matter, the Carrier alleges that the Claimant's appeal is procedurally deficient as it failed to identify the governing agreement or any rule that was violated. The Carrier explains that if no violation of any rule or agreement is cited, then no such violation could have occurred. The Carrier also takes issue with the Organization's allegation that Claimant was "unjustly disqualified," as allegations of unjust treatment must be handled through a separate hearing process, which the Organization did not request.

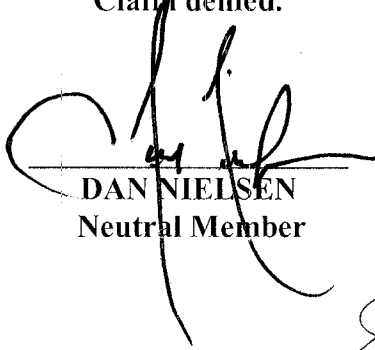
Regarding the substance of the appeal, the Carrier asserts that the Organization has failed to meet its burden of proof. Claimant did not attend the hearing to testify or provide other evidence, and Ms. Schlais and Mr. Baiamonte's testimony establishing Claimant's history of failing to properly protect track defects is unrefuted. The Carrier maintains it has a responsibility to ensure the safety of its workers and the public, and by failing to comply with Company rules and instructions, employees like Claimant are placing others in harm's way. No level of seniority supersedes a Foreman's duty to properly protect rail defects.

After a thorough review of the record, we find that the Organization has failed to meet its burden of proof. In addition to not having Claimant present at the hearing, the Organization failed to present any evidence indicating that Claimant should not have been disqualified. The argument that Claimant's tenure should serve as a reason not to disqualify him for his mistake is not compelling. Indeed, there can hardly be an excuse for Claimant's mistake, which happened at least twice, given how many years Claimant has served as Foreman. As such, we must deny the claim.

In terms of penalty, witnesses confirmed that the decision to disqualify an employee from a position is a joint decision with the Division Engineer. Failing to properly protect a track defect, especially on a line of track with trains moving anywhere between 50 and 90 miles per hour, could have disastrous consequences and could easily be considered a dismissible offense. Claimant here was not dismissed, but merely removed from his position as a Foreman, and we see no reason to overturn that decision.

AWARD

Claim denied.

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DAN NIELSEN
Neutral Member

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LOGAN MCKENNA
Carrier Member

A handwritten signature in black ink, appearing to read 'Jeffery L. Fry', is written over a horizontal line.

JEFFERY L. FRY
Organization Member

Dated this 26 day of March , , 2025.