

**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. 528 – Award No. 528 – M. Jones  
Carrier File No. 14-19-0299  
Organization File No. 2419-SL13S1-1954

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Michael Bryan Jones, Emp ID 0047985, Seniority Date 06-14-2011 for the removal of the Claimant's Standard Formal Reprimand and 1 Year Review Period. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be reimbursed for attending this investigation 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, M. Jones, has been employed by the Carrier since 2011. On August 23, 2019, following an investigation, the Carrier found Claimant guilty of failing to follow Maintenance of Way Operating Rule (MOWOR) 1.28 Fire on July 16, 2019, resulting in a fire that damaged Company property and caused significant train delays. MOWOR 1.28 Fire requires employees to take precautions to prevent loss and damage from a fire and provides that fires must be promptly reported to the train dispatcher unless they are being controlled. The Carrier assessed Claimant a Standard Formal Reprimand with a one-year review period.

This is the first of four cases before this Board stemming from the events of July 16, 2019. The essential facts of this case are largely undisputed. At the time of the incident, Claimant was working as a Foreman on a four-man gang tasked with cutting rail at Milepost 1133.7 on the Stockton Subdivision. At approximately 1200 hours, the crew briefed and filled out the necessary

forms prior to completing hot work. Claimant stated that he was preparing the boom equipment when he heard a popping noise. He looked over and saw Employee Gamaliel Reyna spraying the fire with a water cannon. Claimant took fire extinguishers from the crew's truck and assisted Mr. Reyna. After their unsuccessful attempts to put the fire out, Claimant instructed the workers to move the truck and proceeded to call 911 for assistance. The fire damaged a retaining wall and almost two miles of vegetation.

Structure Supervisor Anthony Alvarez testified that he arrived at the scene of the fire between 4:00 p.m. and 4:30 p.m. He was not present when the fire started nor during the crew's briefing prior to starting work. Mr. Alvarez did, however, testify that the Job Safety Briefing Form indicated that the crew did not pre-wet the area and the Fire Prevention Risk Assessment Form did not indicate whether they had shovels on hand.

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.

On the merits, the Carrier argues that Claimant and his crew failed to take every precaution necessary to prevent loss and damage by fire. In support, the Carrier states that Claimant's testimony contradicted the written briefing forms filled out prior to beginning work on July 16, 2019. Specifically, Claimant circled "no" in response to the prewet question on the form but testified that he did prewet the area with a small, pressurized water tank, which he did not think the Carrier would classify as prewetting. According to the Carrier, Claimant's failure to properly fill out the Fire Prevention Risk Assessment Form, compounded with Claimant's "negligent behavior," led to the fire.

The Organization asserts that Claimant did not violate MOWOR 1.28, noting that he and his work crew did pre-wet the area and had all the proper tools staged prior to beginning their work. The crew used all the resources available to them but were unsuccessful in putting out the fire and called the proper authorities. That "no" was circled under prewet on the briefing forms and shovels was not circled at all did not cause, nor would it have prevented, the fire.

We do not find Carrier's procedural argument compelling and thus proceed to the merits of the case. Having reviewed the record in its entirety, we find that the Carrier has failed to satisfy its burden of proving Claimant's guilt. The Carrier's arguments rest solely on the briefing forms. Mr. Alvarez, who was not present for the briefing nor at the time the fire broke out, testified that he did not know if the crew prewetted and he did not know if the crew had the proper tools out. Most importantly, when asked if the crew "did every precaution to prevent this fire," Mr. Alvarez responded, "I don't know." "I don't know" is simply not enough to be considered substantial evidence.

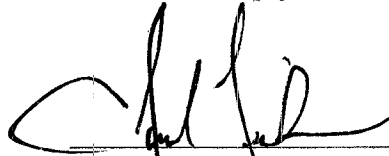

It is not outside the realm of possibility that Claimant inadvertently mismarked the briefing forms. A mismarked form does not cause a fire. Further, the fact that Mr. Alvarez did not see any shovels at the scene when he arrived several hours after the fire had started is not enough to prove that the crew did not have shovels on hand. Without sufficient testimony or other further evidence

to support the Carrier's argument that the crew did not prewet or have the proper equipment to prevent the fire, the Carrier has failed to meet its burden.

While the discipline assessed here is unlikely to be life-altering, it is surely unwarranted based on the lack of evidence of any rule violation. For that reason, we must sustain the claim.

**AWARD**

**Claim sustained. The Carrier is to comply with this Award within 30 days.**

  
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DAN NIELSEN  
Neutral Member  
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LOGAN MCKENNA  
Carrier Member  
\_\_\_\_\_  
JEFFERY L. FRY  
Organization Member

Dated this 26 day of March , , 2025.