

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 529 – Award No. 529 – G. Reyna
Carrier File No. 14-19-0298
Organization File No. 2419-SL13S1-1956

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Gamaliel Reyna, Emp. ID 3002532, Seniority Date 10-10-2017 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, G. Reyna, has been employed by the Carrier since 2017. 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 second 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 Trackman 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 was assigned to serve as the Fire Watch. He testified that the crew laid out all the tools, and Claimant had the spark deflector shield on hand when Employee Sepulveda was cutting the rail. Claimant also asserts that the crew sprayed the area to be worked but did not have the ability to saturate the area for a full prewet.

Claimant heard cracking behind him and saw the fire when he turned around. He used his water cannon in an attempt to quell the fire, and Employee Jones handed Claimant a fire extinguisher when his water cannon ran out. Despite the crew's best efforts, they were unable to put out the fire. The fire damaged a retaining wall and almost two miles of vegetation. This is Claimant's first disciplinary action.

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 never confirmed that he complied with MOWOR 1.28, but he simply testified that he did what he could with the tool she was given. The Carrier also points to the part of Claimant's written statement stating that the "wind picked up," which it argues is contrary to the notation of "zero wind" on the briefing form.

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. Claimant was also not the cause of any significant train delay, as Mr. Alvarez testified at the investigative hearing.

We do not find Carrier's procedural argument compelling and thus proceed to the merits of the case. First, that Claimant did not confirm that he complied with MOWOR 1.28 is not proof that he did not. In fact, Claimant confirmed that he was familiar with MOWOR 1.28 and when the Hearing Officer directed Claimant to the first bullet point—stating that employees are to take every precaution to prevent loss and damage from fire—Claimant responded, "that's what we did."

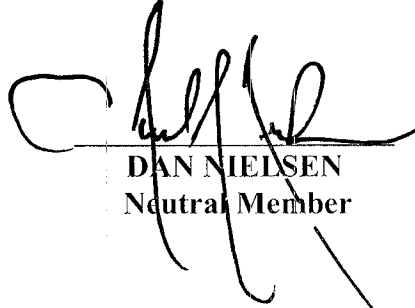
Second, Claimant testified that at the time of the briefing, there was no wind, but he felt a wind pick up after the fire had already started. It is simply unrealistic to expect, as the Hearing Officer insinuates they should have, that the crew would cease trying to put out the fire to re-brief and make a note of the changed wind conditions.

As in the other matters surrounding this event, without sufficient testimony or other further evidence to support the Carrier's argument that Claimant failed to take the necessary precautions to prevent loss and damage from fire under MOWOR 1.28, the Carrier has failed to meet its burden.

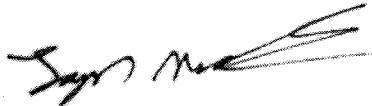
While the discipline assessed here is unlikely to be life-altering, it is surely unwarranted based on the lack of evidence of any rule violation. For that reason, we must sustain the claim.

AWARD


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



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



JEFFERY L. FRY
Organization Member

Dated this 26 day of March , , 2025.