

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 530 – Award No. 530 – J. Sepulveda
Carrier File No. 14-19-0300
Organization File No. 2419-SL13S1-1955

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Jessie Sepulveda, Emp ID 0264580, Seniority Date 03-06-2014 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, J. Sepulveda, has been employed by the Carrier since 2014. 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.

The essential facts of this case are undisputed. At the time of the incident, Claimant was working as a Backhoe Machine Operator 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 then torched the rail in preparation to cut. He testified that had his spark deflector and round-nosed shovel on hand. Claimant put on his personal protective equipment for saw cutting and Employee Gama was standing watch for fires, equipped with a water cannon.

Approximately five to ten seconds after Claimant cut into the rail, Mr. Gama yelled, "fire," prompting Claimant to immediately stop cutting and assist in trying to put out the fire. After the two water cannons were emptied, Claimant and Mr. Gama used the fire extinguishers. However, the fire spread too quickly, and the men had to step away. The fire damaged a retaining wall and almost two miles of vegetation.

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. The Carrier states that under the guidelines in "Safety Topics, Fire Safety During Hot Work In Right of Way Areas," one round nose shovel per person is required for hot work. Claimant testified that the four-person gang had two round nose shovels. The Carrier also points to Claimant's admission that according to that document, he was in violation of MOWOR 1.28.

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 of 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, the Carrier's witness, testified at the investigative hearing.

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 "Safety Topics" document referenced states that the minimum fire prevention equipment includes "one (1) round-nosed shovel, Pulaski axe tool or mattock per person." A note on the document provides, in pertinent part:

The number of round-nosed shovels, as nearly as possible, must equal the combined number of Pulaski axe tools and mattocks. In other words – in work groups of three or more people – there should be more round-nosed shovels on hand than mattocks or Pulaski axe tools.

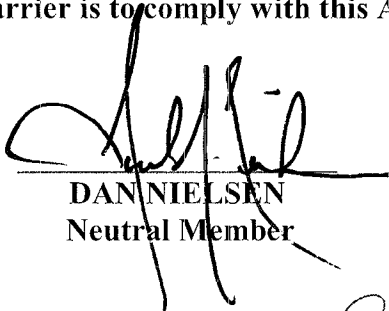
Accordingly, for a four-person gang, having two round-nosed shovels, a Pulaski axe tool, and a mattock would meet the minimum requirements. While testimony confirms that the crew had at least two round-nosed shovels and one Pulaski axe tool on hand, there is no mention of whether the crew had a mattock, not is there a place to indicate such a tool on the Engineering Right-of-Way Fire Prevention Risk Assessment Form. While it is possible the crew did not have a mattock on hand to meet the minimum requirements, we cannot say that its absence has been proven.

Additionally, while admissions are typically deemed sufficient to satisfy the Carrier's burden of proof, Claimant's admission here was based on the Hearing Officer's incorrect interpretation of the "Safety Topics" minimum requirements for fire prevention. Indeed, Claimant's admission only comes after an exchange with the Hearing Officer in which it is clear Claimant and the Hearing Officer do not agree on the interpretation of that document. Claimant's statement that "by this form" he violated MOWOR 1.28 is more concession than admission.

As previously noted, the Carrier bears the burden of proving Claimant's guilt by substantial evidence. 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.