

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 531 – Award No. 531 – A. Moreno
Carrier File No. 14-19-0302
Organization File No. 2418-SL13S1-1957

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We Present the following claim on behalf of Alejandro Moreno Emp ID 3054020, Seniority Date 09-10-2018 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, A. Moreno, has been employed by the Carrier since 2018. 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 last 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 Truck Driver 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 responsible for ensuring the crew had the proper tools to perform their job safely. As the crew began work, he saw Employee Sepulveda making a rail cut with his spark deflector set up. A spark from the cut landed on the dry grass and started a fire.

The crew attempted to put the fire out with their water cannons, and Claimant grabbed their other water cannons and fire extinguishers to assist. 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. 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, the briefing forms, initialed by each member of the crew, did not indicate that the crew had shovels with them. Claimant testified that they had several shovels, and that his coworker must have forgotten to note that on the forms. According to the Carrier, Claimant's signing off on the improperly completed briefing forms, 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, despite not properly marking so on the briefing forms. 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.

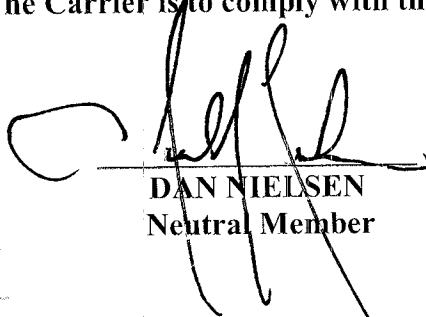
We do not find Carrier's procedural argument compelling and thus proceed to the merits of the case. Having reviewed the record in its entirety, we find that the Carrier has failed to satisfy its burden of proving Claimant's guilt. The Carrier's arguments rest solely on the briefing forms. Mr. Alvarez, 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 though he did not see shovels when he arrived, that did not mean there were no shovels at the scene.

The Carrier's argument and line of questioning with Mr. Alvarez at the hearing suggest that because the form was not filled out correctly, the crew did not take steps to prevent the fire. A mismarked form does not cause, nor will a properly completed form prevent, 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.

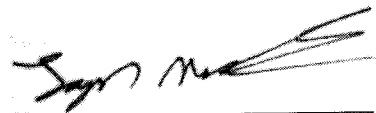
While the discipline assessed here is unlikely to be life-altering, it is surely unwarranted based on the lack of evidence of any rule violation. For that reason, we must sustain the claim.

AWARD

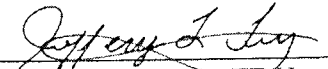
Claim sustained. The Carrier is to comply with this Award within 30 days.



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



JEFFERY L. FRY
Organization Member

Dated this 26 day of March , , 2025.