

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 540 – Award No. 540 – W. Pingleton

Carrier File No. 14-20-0043

Organization File No. 2433-BN40S1-1999

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of William Pingleton (0294926) Seniority Date 3-10-2018 for the removal of the Claimant's Standard 20 Day Record Suspension, with additional 1-year review. In addition, we request all record of discipline removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s):

1. Straight time for each regular work day lost while attending formal investigation.

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, W. Pingleton, has been employed by the Carrier since 2014. On January 3, 2020, following an investigation, the Carrier found Claimant guilty of failing to be alert and attentive while operating the Grove crane on November 22, 2019, resulting in damage to the equipment, at or near Milepost 132.3 on the Hastings Subdivision. The Carrier determined that Claimant had violated Maintenance of Way Operating Rule (MOWOR) 1.1.2 Alert and Attentive and assessed him a Standard 20-day Record Suspension with a one-year Review Period.

At all times relevant, Claimant was working as a Machine Operator on regional gang TRPX0004 near Hastings, Nebraska. Assistant Roadmaster Kiyoshi Hardwick testified at the hearing that on November 22, 2019, Claimant volunteered to help move the Grove crane. Mr.

Hardwick dropped Claimant at the crane between 7:00 a.m. and 8:00 a.m., which he described as daylight but "not quite bright," where Claimant performed his required pre-operation checks. He explained that Claimant would have had to check the boom, tires, and anything else that would prohibit him from moving or operating the equipment. However, he stated that he did not know what the specific pre-check items were.

Mr. Hardwick stated that although he was present during Claimant's inspection, he could not verify whether the boom worked at that time, only that Claimant did not tell him it was not. After the inspection, Claimant started up the crane and Mr. Hardwick left to rejoin the gang. Claimant later notified him that the boom on the Grove would not move up and down. Mr. Hardwick stated that he then contacted the mechanic, who informed him that the reel assembly on the boom had broken off when Claimant was moving the Grove to put it in place to load on the flat cars.

Mr. Hardwick testified that when he talked to Claimant afterward, Claimant said he noticed that he would not be able to fit down the right-of-way because the trees still had branches, so he decided to back up and follow a dirt path onto the crossing. According to Mr. Hardwick, Claimant explained that when the Grove was on the tracks, he was unable to maneuver the boom up and down before loading it onto the ramp. Claimant then loaded the crane before loading the speed swing, which is the machine he regularly operated.

Mr. Hardwick further explained that the day prior, the Grove operator moved the crane about eight miles up the track and did not report any issues with the boom. Because of that, Mr. Hardwick assumed that Claimant may have hit some branches when he proceeded down the right-of-way. He explained that he did not ask Claimant about this assumption. Mr. Hardwick testified that he could not identify any damaged tree or broken branches, nor did he see any tree debris on the boom.

Mr. Hardwick also provided photographs of the Grove crane at issue and the alleged path of travel, but none of the claimed damage to the crane's reel assembly. He testified that he did not know which of the machine parts seen in any of the photographs had been broken. Mr. Hardwick explained that the crane was not repaired on the tracks and was next used on November 27.

At the investigation, Claimant testified that on November 22, he was working on the rail gang and recalled either being asked or volunteering to load the Grove crane. After Mr. Hardwick dropped him off at the crane, Claimant stated he did a full walk-around, making sure the hi rails were up, all the lights worked, and the air valves were closed before starting the machine. Claimant explained that he is not qualified on a Grove crane and had never run one before; he only knew how to travel it, not operate it.

Claimant explained that he completed his inspection that morning at about 6:30 when it was still dark outside. He stated he could not see the boom clearly, as he only had minimal natural lighting and the lighting on the machine itself. Claimant explained that at that time, he was texting another operator qualified on the Grove crane to verify that he was doing everything necessary before operating the crane. He explained that in going over the checklist of items to inspect, the other operator never mentioned the reel assemblies.

Claimant then explained that before Mr. Hardwick dropped him off at the Grove, they traveled down the right-of-way in Mr. Hardwick's truck. Claimant stated it was a little brushy, but there were no overhanging tree limbs. He thought that the right-of-way continued on to the next crossing, so he was prepared to follow that road in the Grove to get on at the crossing and load the crane on the flats.

Claimant denied running into anything on the right-of-way and stated that he stopped five to ten feet into the brush when he noticed branches hanging out, realized the machine was not going to fit any further, then backed up and followed a dirt road to the crossing instead. He testified that he did not hit anything as he backed up and did not experience any travel obstacles down the dirt road.

Claimant testified that he was already traveling down the rail when the sun came up, and at that point, he could see a thin wire hanging that almost blended in with the winch cables on the boom. Everything needed to travel the machine was working fine. Claimant tried to raise the boom before loading the crane onto the scorpion car, and when the boom would not lift, Claimant called a mechanic and Mr. Hardwick. Before getting the crane up on the flat cars, Claimant tied up the wire because it was hanging down about five to six feet and almost touching the rail. The mechanics arrived once the crane was already chained down.

Claimant testified that none of the pictures provided at the hearing by the Carrier show the wire that was broken, but a picture of the side view shows a previously broken reel assembly on the boom, which was being held together at the time with vise grips. Claimant further explained that the reel next to it had a small wire about half an inch in diameter, which is what he noticed was broken on November 22. He stated that the length of wire between the reel and the tip of the boom was intact, but the wire was broken where it connected to the rail in the middle of the boom. Claimant testified that the mechanics told him the wire goes to a load sensor or length sensor for the boom. Claimant testified that he was alert and attentive and denied violating any rules.

On November 19, 2019, Claimant received a Formal Reprimand with a one-year review period for failing to report for duty at the designated time and place. Claimant received a 10-day Record Suspension with a one-year review period on November 20, 2019, also for failing to report for duty.

The Carrier asserts that Claimant was negligent in his pre-operation check of the Grove crane. As a result, the Grove crane sustained damage and the boom was inoperable. Initially, Claimant stated that the wires were not noticeably hanging, but later testified that the wires were hanging so low to the ground that they had to be tied up. Claimant's failure to choose the safest course contributed to the Grove crane being damaged.

The Carrier further argues that despite the Organization's doubts about the damage to the Grove crane, consistent evidence that the machine had visible damage on November 22, 2019, compared to no damage the day prior, was presented at the hearing. Mr. Hardwick specifically testified that he received no reports that the Grove crane was not operating properly or had

any damage. It is clear from the damage sustained and from his testimony at the investigation that Claimant was not alert and attentive, and his claim should be denied.

The Organization contends that Claimant did not take the travel route through the trees; had Claimant hit a tree branch hard enough to cut a wire in two, there would have been some sign of damage along that route. Indeed, Mr. Hardwick testified that he found no evidence of any broken limbs in the area of travel, nor did he see any signs of debris or damage on the Grove crane itself. Claimant demonstrated that he was alert and attentive by contacting a qualified operator on another crew to make sure he was fully prepared to operate the unfamiliar equipment. As soon as Claimant noticed a wire was broken, he stopped, tied it up, and reported it to the roadmaster and mechanics.

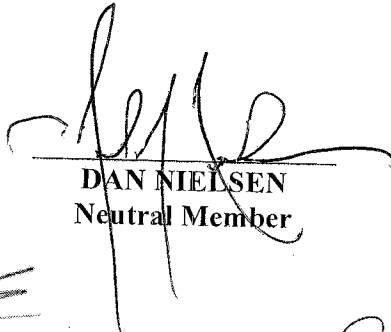
The Organization also argues that the Carrier's witness, Mr. Hardwick, initially stated that he had no pictures of any damage to the Grove crane, then later explained that he did not know what was broken. The machine was still in use until it was repaired on December 2. No Carrier officer asked Claimant any questions before scheduling an investigation. Claimant merely reported a defect on the crane and is now being disciplined for volunteering to help move it in the absence of the regular operator, and his claim should be sustained.

We have reviewed the record in its entirety and find that the Carrier has failed to meet its burden of proving Claimant's guilt by substantial evidence. The investigation record did not include photos of any damage to the machine and no witness to any damage allegedly caused by Claimant. That Mr. Hardwick was present for the inspection makes no difference because he did not know what Claimant was required to check.

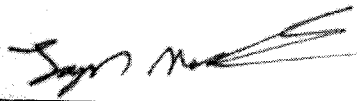
Further, the Carrier relies on testimony from Mr. Hardwick that since another operator had moved the Grove crane the day prior and had not reported any damage or operating issues, he assumed there were none. However, the absence of a damage report from the day prior is not sufficient evidence that Claimant caused the damage. As there is no indication that the damage or malfunction resulted from any alleged negligence, the claim will be sustained.

AWARD

Claim sustained. Claimant shall be made whole for any losses in accordance with the parties' Agreement, and all references to this discipline shall be stricken from his personal record.



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



03/24/2025

JEFFERY L. FRY
Organization Member

Dated this 24 day of March , 2025.