

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 550 – Award No. 550 – M. Brownlee

Carrier File No. 14-20-0161

Organization File No. 2421-SL13S1-2011

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Carrier file # RDV-MOW-2020-00421, Mario Brownlee (3040979) Seniority date May 21, 2018, for with removal of Level S, Actual Suspension from March 05, 2020, through April 04, 2020, in addition to a Three (3) year review period, with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for: 1) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended); 2) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service. 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended. 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly withheld from service commencing March 05, 2019, through April 04, 2020, and/or otherwise made whole. All notations of the discipline should be removed from all Carrier records.

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. Brownlee, has been employed by the Carrier since 2018. On April 1, 2020, following an investigation, the Carrier determined that Claimant failed to maintain a safe braking distance and safe machine spacing, resulting in his regulator striking a tamper near Milepost 122.7 on the Houston Subdivision on March 5, 2020. The Carrier found that Claimant had violated Maintenance of Way Operating Rules (MOWOR) 6.51 maintaining a Safe Braking Distance and 6.52 Spacing of On-Track Equipment and assessed him a Level-S 30-day Actual Suspension with a three-year review period.

At all times relevant, Claimant was working as a Machine Operator on surfacing gang TSCX0058 on the Houston Subdivision. Christopher Durham, Assistant Roadmaster for the Red River Division, testified at the investigation that he was notified the morning of March 5, 2020 that two machines had collided and both operators were sent to the hospital. Once he arrived at the scene, Claimant told him he had been preparing to plow away from the tamper but instead collided with the tamper at a slow speed. Mr. Durham and the two mechanics on the crew did a three-man inspection of the regulator and found that the machine was in proper functioning order. Mr. Durham observed no working damage to either machine, and both machines were back in service the following day.

Mr. Durham also presented a written statement from the tamper operator, Jason Bennett, who was not present at the hearing. He stated that the gauges on his machine were fine, but the regulator was all the way up against his machine and had hit it. Mr. Durham noted that the tamper can only work going forward and that a tamper operator must rely on the machine operator behind him to maintain the proper distance to avoid a collision.

Claimant testified that he had the regulator in work mode a little over 50 feet—approximately two machine lengths—away from the tamper when he put the machine in forward to plow away from the tamper, but the machine lurched in reverse. Claimant stated it went so fast that by the time he applied all the brakes, the regulator had pushed up against the tamper. This was Claimant's third day assigned to the regulator and the first day operating it alone, but he was not aware of any prior issues. He did not radio or signal to anyone that the machine was malfunctioning because there was not enough time. Claimant expressed that he did not intend to move south toward the tamper and thought he stopped it in time, only realizing after it stopped that it had made contact with the other machine.

Claimant previously received a Level-S 30-day Record Suspension with a three-year review period on May 6, 2019 for misconduct and discourteous behavior toward other employees and indifference to duty.

The Carrier asserts that Claimant's negligence caused the regulator to hit the tamper. Indeed, Claimant admitted that there were no prior issues with the regulator. The Carrier contends that Claimant failed to maintain the required minimum distance between the two machines, resulting in damage to Company equipment and two employees in the hospital.

The Carrier maintains that Mr. Bennett's absence from the hearing is irrelevant, as Mr. Bennett provided a statement consistent with Claimant's testimony and the evidence is clear that Claimant caused the accident. His guilt has been proven by substantial evidence. The Carrier states that the level of discipline assessed is appropriate, and urges that the claim be denied.

The Organization first argues that the Carrier's investigation was inadequate and clearly not meant to determine all the facts surrounding the incident, as it failed to have the other machine operator involved, Mr. Bennett, present to testify at the hearing. The Organization further notes that Claimant had been on furlough before the Carrier offered him an open position, and the Carrier was aware that Claimant had never operated a regulator before. This was the reason he chose to have another employee run the machine for three days while Claimant merely observed, before operating it on the fourth day. This was, the Organization states, Claimant's first day operating the machine alone.

Nevertheless, the Organization states, Claimant knew about braking and maintaining a safe operating distance. The Organization maintains that he kept the required distance. The Organization points to Claimant's testimony that he approached the tamper and stopped in excess of 50 feet away. However, the Organization notes, although Claimant engaged his machine to begin working north, it suddenly lurched southward, he hit the brakes, and noticed he was up against the tamper, although neither he nor the other operator realized the tamper had pressed up against the other machine.

The Organization stresses that because Mr. Bennett was not present at the investigation, too many unanswered questions remain as to the facts of the incident. The Carrier has therefore failed to meet its burden of proof, and the claim should be sustained.

We have carefully reviewed the record in its entirety and find that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. While it appears that Claimant did not intend to travel south and hit the tamper, it is clear that the collision was due to user error, since the regulator presented with no issues before or after the incident. Indeed, Claimant stated the machine had not lurched backward during his training the three days prior to the incident, nor was he aware of any issues, and Mr. Durham testified that upon inspection following the incident, it appeared to be in proper working order.

The applicable Carrier Rules specifically require machines in work mode to remain 50 feet apart to avoid a serious collision. Claimant maintained that he was more than 50 feet from the other machine, and that he only hit it because his machine unexpectedly lurched in the wrong direction. There is no logical explanation for this other than Claimant negligently put the machine in the wrong gear. No matter how little experience he had on the machine, that was a basic function he should have known. The other operator's absence from the hearing is irrelevant, as Claimant's own testimony establishes his guilt, which has been proven by substantial evidence.


With regard to the penalty, this was a serious violation which could have resulted in far more serious damage or injury. Given Claimant's short tenure with the Carrier and the fact that he was in the active review period for a previous violation, we see no abuse of discretion in the Carrier's decision to impose a 30 day actual suspension and a three year review period.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



JEFFERY L. FRY 03/24/2025
Organization Member

Dated this __24__ day of March , 2025.