

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 181, (Case No. 181)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

**VS**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Joy E. Mendez, Carrier Member  
David R. Scoville, Employee Member

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1 The Carrier violated the Agreement commencing January 31, 2014, when Claimant H. Bitsui (6592919), was disciplined with a Level S 30-day Record Suspension with a 3-year review period for his alleged unauthorized operation of company vehicle 24149 without a valid driver’s license and his carelessness of the safety of himself and others when he failed to stop at a stop sign and was speeding while operating this company vehicle at approximately 8:11 pm on March 6, 2014 while off duty in Belen, New Mexico. The Carrier alleged violation of Maintenance of Way Safety Rule (MOWSR) 12.1.1 General Requirements and Maintenance of Way Operating Rule (MOWOR) 1.6 Conduct.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant’s record this discipline and he be reinstated, if applicable, with seniority, vacation, all rights unimpaired and pay for all wage loss including overtime commencing March 6, 2014, continuing forward and/or otherwise made whole.”  
(Carrier File No. 14-14-0291) (Organization File No. 170-SF13N1-1440)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within all the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

It was alleged that on March 6, 2014, the Claimant improperly operated a company vehicle while off duty and because of that allegation the Claimant was directed to attend a formal Investigation on March 25, 2014, which was mutually postponed until May 23, 2014, concerning in pertinent part the following charge:

**“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged unauthorized operation of company vehicle 24149 without a valid driver’s license and your alleged carelessness of the safety of yourself and others when you failed to stop at a stop sign and were speeding while operating this company vehicle at approximately 2011 hrs. on March 6, 2014 while off duty in Belen, NM. The date BNSF received first knowledge of this alleged violation is March 11, 2014.”**

On June 10, 2014, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30-Day Record Suspension with a Three (3) Year Review Period.

It is the position of the Organization that the Carrier presented no tangible evidence or witnesses to prove its allegations and instead only questioned the Claimant. It argued that decision by the Carrier Officer was highly prejudicial and could only be construed as nothing more than pre-judgement of the Claimant. It further argued that if the Carrier had proven its allegations, which it did not do, the discipline was excessive rather than corrective for a long-term employee with 34 years of productive service. It requested that the discipline be rescinded and the claim be sustained as presented.

It is the Carrier’s position that the Claimant testified that he failed to stop at a stop sign, and he was speeding while driving a company vehicle he was unauthorized to drive and because of that admission it was not necessary to produce any other evidence or call any other witnesses. It closed by asking that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and has determined the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

Examination of the transcript pages 10 and 11 reveals that the Claimant admitted his guilt and violation of the charges and offered no defense for his actions. It is clear that substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 34 years of service, however, the Claimant committed

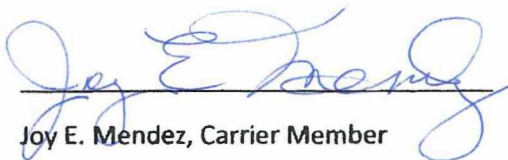
a serious infraction and the discipline was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). Therefore, the Board finds and holds that the discipline exercised by the Carrier was corrective in nature and it will not be set aside because it was not excessive, arbitrary or capricious. The claim will remain denied.

**AWARD**

Claim denied.



William R. Miller, Chairman & Neutral Member



Joy E. Mendez, Carrier Member



David R. Scoville, Employee Member

Award Date:

