

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 201, (Case No. 201)**

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

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, 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 June 30, 2015, when Claimant, James I. Barela (1496595) was disciplined with a Level S 30-Dat Record Suspension with a 3-year review period for his failure to wear his seatbelt while operating vehicle 26993 on June 30, 2015 at approximately 11:30 a.m. while working as a Track Supervisor in the Albuquerque Yard. The Carrier alleged violation of Maintenance of Way Safety Rule (MWSR) 12.5 Seat Belts and MWSR 14.1.2 Seat Belts.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant’s record this dismissal and he be reinstated, with seniority, vacation, all rights unimpaired and pay for all wage loss commencing June 30, 2015, continuing forward and/or otherwise made whole.”**
(Carrier File No. 14-15-0373) (Organization File No. 150-SF13S1-1537)

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.

The facts indicate that on June 30, 2015, the Claimant was assigned as a Track Supervisor, at Albuquerque, New Mexico. It was alleged that on that date Claimant operated a Carrier vehicle in the Albuquerque Yard without wearing a seat belt and because of that allegation the Claimant was directed to attend a formal Investigation on July 14, 2015, which was mutually postponed until July 22, 2015, 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 failure to wear your seatbelt while operating vehicle 26993 on June 30, 2015 at approximately 1130 while working as a Track Supervisor in the Albuquerque Yard. The date BNSF received first knowledge of this alleged violation is July 1, 2015.

This investigation will determine possible violation of MWSR 12.5 Seat Belts and MWSR 14.1.2 Seat Belts.”

On August 18, 2015, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30-Day Record Suspension with a Three Year Review Period.

The Board notes that the case correctly states in the Statement of Claim, Part 1 that Claimant was issued a Record Suspension whereas in Part 2 it requests reinstatement.

It is the Organization’s position that the record shows that the Claimant noticed a large truck moving through the Albuquerque Yard at a high rate of speed and he was fearful the truck would not stop at an approaching crossing and because of that safety concern he jumped into his vehicle so as to catch the Truck Driver and pull him over and in his haste he drove approximately 30 to 40 feet before he realized he had not buckled his seat belt at which time he stopped and buckled up. The Organization argued that given the special circumstances of the incident the discipline exercised was excessive and should be set aside. It requested that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that on June 30, 2015, Claimant operated Carrier vehicle 26993 while working in the Albuquerque Yard without his seat belt. It argued that according to the Claimant’s testimony he began driving without his seat belt and drove 30 to 40 feet before he realized he was not wearing his seat belt. Additionally, it argued review of the transcript shows that Claimant was driving about 15 mph when Claimant abruptly stopped, triggering the Drive Cam, which recorded him driving without a seat belt. Lastly, it asserted the record is clear that the Claimant was guilty as charged and the discipline was appropriate and it asked that the discipline not be disturbed and the claim remain denied.

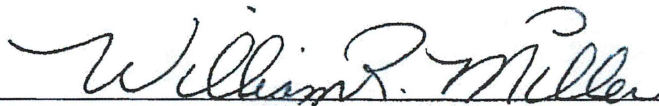
The Board has thoroughly reviewed the transcript and record of evidence and it is determined the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

Turning to the record there is no dispute between the parties that the Claimant drove his Carrier Vehicle 26993 approximately 30 to 40 feet before he buckled his seat belt. The Board is not unsympathetic to the Claimant's special circumstances argument, however, driving unsafely for even a short distance to try and stop the careless driving of another person is not a viable excuse for the lack of safety nor does it eliminate the Claimant's violation of MWSR 12.5 and MWSR 14.1.2. It is clear that the Carrier met its burden of proof that the Claimant was guilty as charged.

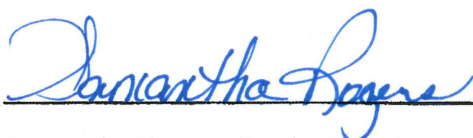
The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately seven years of service with a Formal Reprimand still open under a 12 month review period as that prior violation occurred only five weeks before the subject incident. The discipline assessed was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA), therefore, the discipline will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

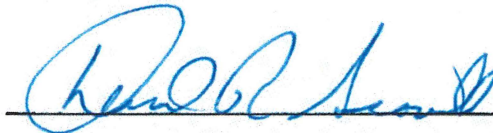
Claim denied.



William R. Miller, Chairman & Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 7/21/17