

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 208, (Case No. 208)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES 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 Brotherhood that:

- 1. The Carrier violated the Agreement commencing May 22, 2015, when Claimant, Hector Guajardo (1754050), was given a Level S 30 day Record Suspension 3 year review period for a collision while driving company vehicle 27493 on April 3, 2015 on the Fort Worth Subdivision. The Carrier alleged violation of Maintenance of Way Safety Rules 12.1 – Operation of Motor Vehicles and 12.1.1 – General Requirements.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant’s record this discipline with all rights unimpaired and pay for all wage loss including overtime commencing April 3, 2015, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-16-0121) (Organization File No. 90-SF13C2-1519)**

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 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 April 3, 2015, Claimant was working as a Machine Operator it was alleged the Claimant was involved in an accident and because of that allegation the Claimant

was directed to attend a formal Investigation on April 17, 2015, which was mutually postponed until April 23, 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 collision while driving company vehicle 27493 on April 3, 2015 at approximately 0752 on the Fort Worth subdivision. The date BNSF received first knowledge of this alleged violation is April 5, 2015.

This investigation will determine possible violation of MWSR 12.1 Operation of Motor Vehicles and MWSR 12.1.1 General Requirements.”

On May 22, 2015, the Claimant was 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 record shows that the Claimant admitted there was a vehicular collision on April 3, 2015, however, when Claimant was making his left-hand turn to the side of the tracks, there wasn't any oncoming traffic. It argued that review of the evidence shows that the oncoming traffic did not appear in the Drivecam photographs until Negative 0.25 seconds, as zero being the triggering event. According to the Organization, that was proof that from the time the vehicle appeared in view and struck the Claimant's vehicle was 1.25 seconds of time. The Claimant stated that once he saw the other vehicle he stopped and the other driver never looked his way, but instead was looking down the tracks at a backhoe. It asserted the Claimant tried to prevent the collision by first making sure the lane was clear before turning and secondly by stopping as soon as he saw the other vehicle whereas the other driver made no attempt to avoid the collision. Lastly, it argued the accident was the fault of the other driver, therefore, it reasoned that the Carrier did not meet its burden of proof. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the Carrier's position that a review of the transcript and various exhibits shows that the Claimant was the cause of a collision with another vehicle while driving a company vehicle on April 3, 2015, at approximately 7:52 a.m. on the Fort Worth Subdivision. It argued that contrary to the Organization's arguments the photographs taken by the Drivecam show there was a vehicle in the on-coming traffic lane prior to the Claimant turning left and although the Claimant tried to place blame on the other driver, it was the Claimant that was looking away from the road when he turned left as seen in Exhibit 5c prior to colliding with the on-coming vehicle. Lastly, it reasoned 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.

The Board notes that both parties raised multiple procedural objections during the Investigation and subsequent handling of the dispute. Those objections will not be addressed because the parties agreed on a non-precedential basis that this case should be determined on its merits only.

Two documents are relevant to the resolution of this matter. The first is the Joshua Police Department Accident Report of April 3, 2015, covering the subject incident and entered at the Investigation that stated the following:

“Unit one (Claimant’s vehicle) was attempting to turn left onto a right of way at a railroad crossing wb 100 e 14th st. Unit two was ab 100 e 14th st. Unit two struck Unit one in the front right quarter with front right. Unit two driver advised she never saw unit one. Unit one advised he saw unit two driver looking south down the tracks unaware of unit one attempting the left turn.”

The aforementioned document confirms that the other driver shared guilt regarding the collision of April 3rd, also relevant is Exhibit No. 8 which was the Claimant’s Police Warning. The Claimant was not issued a citation, but he was given a warning for his **“failure to yield right of way turning left”**.

Review of the photographs further reveals that there was a vehicle in the on-coming traffic lane prior to the Claimant turning left and Claimant looked away momentarily from the road when he turned left.

The accident of April 3, 2015, was the result of the Claimant and the other driver’s errors. 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 eight years of service with three prior disciplinary events. The instant discipline was a Serious Level S discipline event and the discipline assessed was in accordance with the Carrier’s Policy for Employee Performance Accountability (PEPA). The Board finds and holds that 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 and Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 1/5/18