

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 209  
AWARD NO. 209, Case No. 209**

**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 the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing May 31, 2016, when Claimant, Kendrick Stevenson (0169383), was given a Standard Formal Reprimand one year review period for creating a grass fire while working at Dickworsham at MP 91.4 on the Wichita Falls Subdivision. The Carrier alleged violation of Maintenance of Way Safety Rule 1.2.3 – Alert and Attentive, Maintenance of Way Operating Rule 1.28 - Fire, and 1.4.2 Protection of Work Area.**
- 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 May 31, 2016, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-16-0289) (Organization File No. 2409-SL13S1-1610)**

**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 February 17, 2016, Claimant was working as Lead Welder at Dickworsham at MP 91.4 when a grass fire started. It was alleged Claimant might have caused

the fire and because of that allegation the Claimant was directed to attend a formal Investigation on March 2, 2016, which was mutually postponed until May 3, 2016, 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 welding activity that created a grass fire while working at Dickworsham at MP 91.4 on February 17, 2016 at approximately 1130 hours on the Wichita Falls subdivision.**

**This investigation will determine possible violation of MWSR 1.2.3 Alert and Attentive, MWOR 1.28 Fire and TW 1.4.2 Protection of Work Area.”**

On May 31, 2016, Claimant was notified that he had been found guilty as charged and was assessed a Formal Reprimand with a One Year Review Period.

It is the position of the Organization that the record shows that the Claimant and his partner worked in a safe manner which was confirmed by the Welding Supervisor, Mr. Adam Ball’s testimony, 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 the Claimants were required to assess the risk of fire related to the work they intended to perform. Part of performing that risk assessment was filling out an Engineering Right-Of-Way Fire Prevention Risk Assessment Form. According to the Carrier, that form was designed to assist employees with determining whether existing conditions supported the safe performance of their intended tasks. It argued that evidence shows that the Claimant and his co-worker did not complete that form thus it was clear their risk analysis regarding whether it was safe to proceed was incomplete. Lastly, it asserted the record is clear that the Claimant was guilty as charged and the discipline was lenient and appropriate. 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.

There is no dispute between the parties that on February 17<sup>th</sup> the Claimant and co-worker were working at Dickworsham at MP 91.4. The Claimant was the Employee In Charge (EIC) and functioned as a fire lookout while his co-worker was cutting rail during which time a spark flew off and started a grass fire. Claimant and his partner attempted to put out the fire without success and called 911 for assistance. Subsequently, a fire department appeared on the scene and put out the fire.

On pages 15 and 16 of the transcript Welding Supervisor testified that he talked to the Claimant and his co-worker and they discussed the fact that the way the saw was set up the sparks were blowing with the wind whereas it might have been better to set the saw so that it was not shooting the sparks with the wind. Mr. Ball went on to testify on page 17 the risk assessment form was filled out correctly absent the Claimant's co-workers name on the back of the form and estimated time of response for the fire agencies to arrive at their location. Mr. Ball went on state on pages 17 and 18 that when you call 911, regardless of the area, it goes to the nearest 911 Operator who will dispatch the nearest fire department and whether or not the Claimant had put in the estimated time of response on the form in question probably would not have changed anything. However, on page 18 he did state the following:

**“...But like I stated, this form is a job briefing. It shows to anybody that looks at this form that a, that at thorough fire risk assessment was performed at, at a particular location.”**

On page 19, Mr. Ball went on to say in discussion of the risk assessment form the following:

**“The wind, the wind still would have blown. The sparks still would have, tools that threw the sparks still would have been used. Uh, so nobody knows, had that been filled out correctly that it would have changed. More than likely, it probably wouldn't.”**  
**(Underling Board's emphasis)**

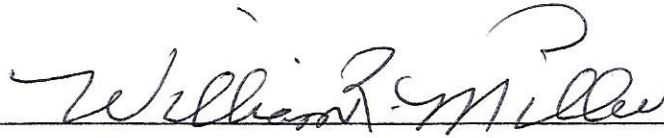
The Carrier has shown that the Claimant did not completely fill out an Engineering Right-Of-Way Fire Prevention Risk Assessment Form, however, that failure had little if any bearing on the grass fire of February 17, 2016, because there was no showing that the Claimant was not alert and attentive as he noticed the fire almost immediately. The record further shows that before the saw cutting work started the Claimant wet down the surrounding area and that he had all of his fire suppression equipment readily available and fully operational. Nonetheless, the Carrier is correct that the filling out of the form is important in that it forces employees to make a thorough fire risk assessment, therefore, the Board has determined that the Carrier has proven that the Claimant did not fulfill all of his job requirements.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had a little over two years of unblemished service. In this instance, the Board finds and holds that Reprimand was a teaching tool and is in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) as it reinforces the requirement upon the Claimant that in the future he always needs to be careful and fully analyze all working conditions.

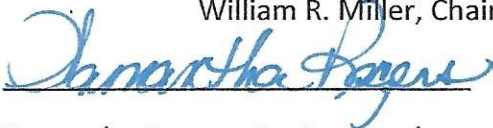
The Board finds and holds that the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

**AWARD**

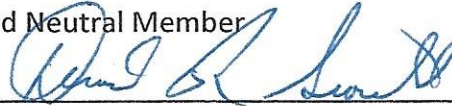
Claim denied.



William R. Miller, Chairman and Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 1/5/18