

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 369, (Case No. 369)**

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

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Michelle McBride, Carrier Member
Louis R. Below, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing August 31, 2020, when Claimant Ryan A. Helms (0198630) was dismissed for failure to position someone at the rear of vehicle 25409 while backing up in the Tulsa Yard on June 30, 2020, which resulted in the damage to the outrigger and for misconduct in violation of MWOR 1.6 and MWSR 12.8.1.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing August 31, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0281) (Organization File No. 0493-BN40S1-2031)**

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 June 30, 2020, Claimant was assigned as a Foreman operating Truck/Vehicle #25309 with Trackman and passenger Justin Dunbar who were working together in Tulsa Yard, Red River Division under the supervision of Roadmaster Kara Brockamp. At approximately 1000 hours, Ms. Brockamp received a call regarding damage to Vehicle #25309

and that an employee was covered in hydraulic oil. Upon arrival at the scene, Ms. Brockamp assessed the situation and discovered Claimant and Trackman Dunbar were assigned the vehicle at the time of the incident.

When interviewed about the incident by Ms. Brockamp, Claimant stated that he and Mr. Dunbar were on the way back to the tool house when they were blocked at the crossing by a train. In an effort to find a quicker route back, they decided to turn the vehicle around. He explained that as they reversed down a small hill and subsequently put the vehicle in drive, the outrigger had struck the dirt hill located behind them. Claimant stated that when the outrigger alarm sounded, Claimant stopped the vehicle so that Claimant and Mr. Dunbar could both inspect the perceived damage. During that conversation, with Ms. Brockamp it was alleged that Ms. Brockamp specifically asked if Claimant provided ground protection during this time, as required by MWSR 12.8.1. Claimant allegedly responded that he provided ground protection. Noticeable damage was done to the rear left of the outrigger. The employees made a temporary repair to the outrigger and then returned to the tool hours. Ms. Brockamp also questioned Mr. Dunbar who provided the same storyline.

Roadmaster Brockamp was concerned about the incident so she notified her supervisor, Division Engineer Jason Watkins. Watkins recommended she contact another Roadmaster to perform a sign and symptoms test. The test was performed without any exceptions and the employees were sent home after Ms. Brockamp was able to inspect the vehicle.

Supervisors Watkins and Brockamp discussed the information and decided further conversation was needed to better understand the events leading up to the incident. Therefore, the next morning, on July 1st, the two employees met with Mr. Watkins and Ms. Brockamp, wherein, they provided the same version of events as the day before. Mr. Watkins then advised the Claimant and Mr. Dunbar that there was a video of the incident, since it was on Carrier property. At that point Claimant and Mr. Dunbar explained that Mr. Dunbar did not provide ground protection and because of that Claimant and Mr. Dunbar were both directed to attend a formal Investigation on July 14, 2020, which was mutually postponed until August 5, 2020, concerning in pertinent part the following:

“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to position someone at the rear of vehicle 25309 while backing up in the Tulsa Yard on June 30, 2020 which resulted in damage to the outrigger and for alleged misconduct.”

On August 31, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

The Board notes that this is the second of two dismissal cases involving two different Claimants that were involved in the same incident and attended the same Hearing and were dismissed on the same date (the first case is Award No. 368).

As stated above, this is the second of two dismissal cases before the Board involving two Claimants and the same incident. The skillful arguments of the respective parties need not be reiterated as they identical to those set forth in Award No. 368 and by its citation are made a part of this Award. The reasoning set forth in the aforementioned Award No. 368 applies equally and by its citation is also made a part of this Award and for the same reason it is determined that the Carrier met its burden of proof and Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had a little over seven years of service with an unblemished Disciplinary Record. Claimant's failure to provide ground protection coupled with an initial failure to be forthright about the incident was a serious offense as dishonesty about any job related subject is a Stand-Alone Dismissible Violation. At the Hearing Claimant was honest about what transpired on June 30, 2020. Unfortunately, Claimant did not choose to be forthright about the incident until July 1st after he was advised by Division Engineer Watkins that Mr. Watkins intended to review a Carrier video of the incident and asked Claimant and Mr. Dunbar if there was anything else they might want to say, at which time Mr. Dunbar admitted he had not been honest about what had transpired after which Claimant confirmed Mr. Dunbar's statement that he too had not been forthright. That admission was not made because Claimant was remorseful, but was made because Claimant knew the video might tell a different story than what Claimant had told. In accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). Therefore, the discipline was appropriate and 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

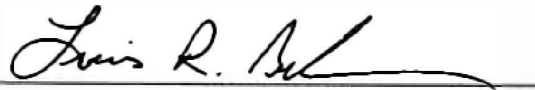
Claim denied.

A handwritten signature in black ink, reading "William R. Miller", is written over a horizontal line.

William R. Miller, Chairman and Neutral Member

A handwritten signature in blue ink, reading "Michelle D. McBride", is written over a horizontal line.

Michelle McBride, Carrier Member

A handwritten signature in black ink, reading "Louis R. Below", is written over a horizontal line.

Louis R. Below, Employee Member

Award Date: March 25, 2022