

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 376, (Case No. 376)**

**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 November 4, 2020, when Claimant Adam Middleton (0358242) was dismissed for failure to ensure the boom was secured resulting in the boom coming into contact with multiple utility lines while driving down the public roadway causing damage to the boom truck and private/public utility infrastructure on August 19, 2020, near Alvarado, TX on the Venus Subdivision in violation of MWSR 12.0, VPR 1.0 and MWSR 17.2.5.**
- 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 wage loss including overtime (if applicable) as well as all health, dental and vision care premiums, deductibles and co-pays that he would have not paid if he had not been disciplined commencing November 4, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0411) (Organization File No. 2409-SL13N1-209)**

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 Claimant and Welder J. Trevino were working on a bridge defect on the Venus Subdivision on August 19, 2020. At approximately 1310 hours, Claimant (driver) and Mr.

Trevino (passenger) began traveling in the boom truck (BNSF vehicle #28750) to Alvarado to the location of the other gang members. A private citizen noticed their vehicle had struck several power lines and waved them down to prevent further damage.

It was at this point Claimant and his coworker noticed that the boom had taken down several power lines. They called 911 and then reported the incident to Structures Supervisor T. Draper. Manager Engineering M. Keim reported to the location of the incident to meet with the first responders and assess the scene. Mr. Keim took statements from witnesses individually and collectively as a group to determine the extent of damages.

In the briefing and in their written statements given to Supervisor Keim, both employees claimed they never received an alarm. Both alleged they did not know anything was wrong until they saw wires hanging and a person waving at them. Claimant further stated he complied with all Rules and procedures. Claimant stated Mr. Trevino completed the pre-trip inspection and tested the stow alarm and everything was in proper working condition. Mr. Trevino acknowledged he was the one in charge of stowing the boom and he stated he did so properly.

During conversation regarding the incident, Supervisor Keim learned that the flag indication for the stabilizer arm had been damaged the day before allegedly causing the proximity sensor to work intermittently which might have caused the stow alarm to fail and should have been noted on the pre-trip inspection and because of that Claimant was directed to attend a formal Investigation with his coworker on September 3, 2020, which was mutually postponed until October 7, 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 ensure the boom was secured resulting in the boom coming into contract with multiple utility lines while driving down the public roadway causing damage to the boom truck and private/public utility infrastructure on August 19, 2020 near Alvarado, TX on the Venus Subdivision.”

On November 4, 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 discipline cases involving two Claimants involved in the same offense that occurred on August 19, 2020, (the first case is Award No. 360 of this Board). In the aforementioned case Claimant was assessed a Level S 30 Day Record Suspension whereas in the subject disciplinary matter Claimant was dismissed. The Board recognizes that discipline can be different for the same offense based upon the individual's disciplinary record. The Claimant in Award No. 360 at the time of the alleged offense had a clear

Discipline Record whereas the instant Claimant had one Level S 30 Day Record Suspension on his Discipline Record.

The parties' respective positions are identical to those expressed in Award No. 360 of this Board and will not be reiterated for the sake of brevity, but are made part of this Award by their citation.

Additionally, the same reasoning expressed by the Board in Award No. 360 applies equally in the instant dispute. As previously stated the facts are clear that the Judging Officer also acted as a primary witness against the Claimant. That dual role was improper because it denied Claimant "due process" since the decision maker assumed the role of judging witnesses' credibility including his own. The Board will follow property precedential Award Nos. 30, 55, 58 and 360 of this Board, therefore, it is determined that the discipline is set aside and the claim is sustained without reviewing the merits.

The Board finds and holds that Claimant will be returned to service with seniority intact, all benefits unimpaired and made whole for all loss of monies since being removed from service, until reinstated in accordance with Rule 13(f) of the Discipline Rule. The Board advises the parties to consider precedential Award No. 287, Interpretation of Award No. 202, of this Board in its settlement of monies owed Claimant.

The Board does not offer any opinion on the merits, but exercises the option to advise the Claimant he should be careful in the future to adhere to all current Rules and Policies because possible violation of some of those Rules could have disastrous consequences.

AWARD

Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed by the parties.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 25, 2022