

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 388, (Case No. 388)**

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

**vs**

**BNSF RAILWAY COMPANY**

William R. Miller, Chairman & Neutral Member  
Michelle McBride, Carrier Member  
Jeffery L. Fry, Employee Member

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing October 15, 2021, when Claimant Larry L. Dupree (0292169) was assessed a Level S 30 Day Record Suspension with a Three Year Review Period for failure to wear a seat belt while operating equipment or vehicles that are equipped with them in the Amarillo South Yard on the Hereford Subdivision at approximately 1115 hours on September 16, 2021, while assigned as Machine Operator in violation of MWSR 12.5 and MWSR 14.1.2.**
- 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 October 15, 2021, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-21-0345) (Organization File No. 2410-SL13S1-2159)**

**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 was working as a Machine Operator on September 16, 2021, spreading ballast in Amarillo Yard on the Hereford Subdivision, when at approximately 11:15 hours Claimant was observed by Roadmaster R. Medlin not wearing a seatbelt while the machine

was in motion and because of that Claimant was directed to attend a formal Investigation on September 30, 2021, 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 wear seat belts while operating equipment or vehicles that are equipped with them in Amarillo South Yard on the Hereford Subdivision at approximately 1115 hours on September 16, 2021 while assigned as Machine Operator.”**

On October 15, 2021, 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.

It is the Organization’s position that Claimant was not wearing a seatbelt for good reason when Roadmaster Medlin observed Claimant operating a front-end loader. It asserted the work Claimant was doing required Claimant to place as much rock as possible between the rails, but not so much as to prevent the nearby surfacing gang from being able to operate across the freshly dumped rock. It argued to accomplish the assignment Claimant, in accordance with MWSR 14.1.2, removed the seatbelt so Claimant could obtain a clear view of the ground guide and surroundings as the terrain, dust and the position of the front-end loader while wearing the seatbelt made it more difficult to visualize the assigned task location and operate Claimant’s machine in a safe manner. It reasoned the Carrier did not meet its burden of proof and it requested the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that a review of the record shows that Claimant operated a front-end loader on September 16<sup>th</sup>, wherein Claimant retrieved ballast from a rock pile and then spread the ballast between the tracks. It stated Roadmaster Medlin testified he witnessed the Claimant operated the machine while not wearing a seatbelt in violation of MWSR 12.5 and 14.1.2. It argued Claimant admitted to removing his seatbelt in order to get a better view of the work Claimant was completing due to rock dust obstructing Claimant’s view. It further argued Claimant additionally admitted that he did not re-secure the seatbelt once he began moving again (See Pages 6 and 60 of the Transcript). It concluded Claimant’s guilt was proven and because of that it appropriately disciplined Claimant. It asked that the discipline not be disturbed and the claim remain denied.

The Board has determined that the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11 and the Claimant was afforded his “due process” Agreement rights.

Review of the record reveals that MWSR 14.1.2 requires employees to wear seatbelts while operating or riding equipment or vehicles that are equipped with them. There is an exception within the Rule that allows seatbelts to be removed when the field of view is obstructed and it is

necessary to stand to obtain a clear view of the surroundings/work area. There is no disagreement between the parties that Claimant removed his seatbelt while spreading ballast on September 16, 2021, nor is there any disagreement that Claimant testified that he removed his seatbelt to obtain a clear view of the work area. On Pages 45 and 60 of the Transcript, Claimant admitted he did not re-secure his seatbelt after the obstruction cleared and Claimant initiated machine movement. It appears Claimant did not operate his machine for an extended period of time while not wearing his seatbelt, nonetheless, operation of the machine for a short or lengthy time was not safe behavior and was contrary to the Rules set forth in the charges. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately seven years of service with no active discipline on his record under review. The discipline assessed Claimant was in accordance with the Carrier's Policy for Employees Performance Accountability (PEPA), therefore, the Board finds and holds that the discipline was appropriate and will not be disturbed and the claim will remain denied because it was not excessive, arbitrary or capricious.

**AWARD**

Claim denied.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Jeffery L. Fry, Employee Member

Award Date: April 11, 2023