

Public Law Board No. 7048

PARTIES) **Brotherhood of Maintenance of Way Employees Division**
) **ATSFF System Federation**
TO)
) **and**
DISPUTE:)
)
) **BNSF Railway Company**

Board Members:

Jeanne M. Vonhof, Chairman and Neutral Member
Michelle McBride, Carrier Member
Jeffery Fry, Employee Member

Statement of Claim

We Present the following claim on behalf of Ruben Duran (0070243), for the removal of the Claimant's Level S 30 Day Record Suspension for Violation of MWOR 1.6, MWOR 1.1.3, MWOR 1.2.7, MWOR 1.1.2, MWSR 12.1. We request all record of discipline be removed from the Claimants record. The Claimant shall be made whole as a result of the Carrier's actions.

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 Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules, or working conditions, nor have authority to change existing agreements or to establish new rules. The Board shall have jurisdiction over the disputes assigned to this Board and such other disputes as may be added during the life of the Board by mutual assent of the parties.

The Claimant, Ruben Duran, received a notice investigation into his responsibility for an alleged failure to report a motor vehicle accident occurring on April 11, 2022, and for allegedly failing to remain alert and attentive when he failed to stop, resulting in a collision while driving a

Company vehicle on April 11, 2022 in Mesa, AZ. By letter dated May 10, 2022 the Claimant was assessed a Level S 30 Day Record Suspension with a One (1) Year Review Period for failing to report a motor vehicle accident resulting from his failing to remain alert and attentive and failing to stop, resulting in a collision on April 11/20/22. The Carrier concluded that the Claimant violated MWOR 1.1.3 Accidents, Injuries, and Defects; MWOR 1.6 Conduct; MWOR1.2.7 Furnishing Information; MWOR 1.1.2 Alert and Attentive; and MWSR 12.1 Operation of Motor Vehicles.

The Claimant submitted a written statement the day after the collision stating that he pulled up to a stoplight with one car in front of him which had pulled up “like he was going to turn right.” The Claimant stated that he also planned to turn right on a red light and so he looked left to check traffic and then proceeded to go forward. However, the car in front of him had stopped and the Claimant hit the other vehicle from behind. The Claimant stated that there was no damage to the Company vehicle, but there was damage to the other party’s bumper. The Claimant stated that he did not think he needed to report the accident to the Company because there was no damage to the Company vehicle, so he decided to exchange only personal insurance information with the other driver. He also stated during the investigation that he had come to a complete stop before moving forward and that after the accident he checked with the other driver to determine if he was okay.

The Claims Department and the Division Engineer notified Roadmaster Justin Satterlund about the accident the same day. According to the Roadmaster, he had spoken to the Claimant about a derailment shortly before receiving the call from Claims and he said that the Claimant failed to report to him during the first call that he had been involved in an accident. The Roadmaster then placed a second call to the Claimant about the accident. The Roadmaster had the Claimant urine-tested for drugs and alcohol and the test was clean. The Claimant said that he provided all information truthfully once his Supervisor asked him about the incident.

The Board concludes that there are no procedural errors that would require this claim to be sustained. There is substantial evidence that the Claimant violated the Company’s rules. Maintenance of Way Safety Rule S-1712.1 Operation of Motor Vehicles, S-12.1.1 General Requirements requires that when employees operate Company vehicles, they do so in compliance with all state and local laws, and in a “careful and safe manner.” The Claimant was not operating the Company vehicle “in a careful and safe manner” or in compliance with all state and local laws when he ran into the car in front of him, causing damage to the other driver's vehicle. The evidence demonstrates that he was not carefully observing the car in front of him as he progressed at 6 mph. Rather, the evidence indicates that, after looking left, the Claimant proceeded without first ascertaining the location of the car in front of him, assuming but not confirming that the car was continuing to move or had already turned and cleared the roadway for his turn.

In addition, the same rule requires an employee to “promptly report traffic incidents, accidents, and vehicle damage no matter how minor to the proper manager.” Furthermore, MWOR Rules 1.1.3 requires that an employee “report by first means of communication any accidents...” The Organization argues that the Claimant talked to his Supervisor about the accident within four (4) or five (5) hours of the accident and suggests that this was a reasonable first means of communication. However, the evidence demonstrates that the Claimant did not call to report the accident. His Roadmaster called him to ask about it, after the Claims Department told him that the

other driver reported it, and after the Roadmaster had already spoken to the Claimant about another matter, after the accident, without the Claimant mentioning the accident. The Claimant clearly did not comply with the Carrier's reporting rules; he said he did not think it was necessary to report in this situation, because the accident was minor and was his fault.

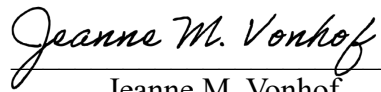
In addition, the Board concludes that the Claimant also violated MWOR 1.2.7, which prohibits the withholding of information or the failure to give "all the facts"... regarding "unusual events" and "accidents." The Claimant was honest and forthcoming with the facts, once he was asked about the accident. However, he initially withheld any and all information about the accident from his Employer. If the other driver had not reported it, this accident and unusual event most likely would have continued to be unreported, given the Claimant's judgment that he did not need to report it.

The Roadmaster stated that the Claimant violated MWOR Rule 1.6 Conduct because, when first asked about the accident, the Claimant said that there was no damage, even though there was damage to the other vehicle. It may be, as the Claimant argues, that he was thinking only about the Company vehicle when he responded. However, he had a responsibility to provide a complete report about the accident, especially when asked about it. Any lack of clarity during that conversation is compounded by Claimant's failure to report in the first place that he had been in accident, even though required to do so.

This conduct falls in the Serious category under the Carrier's disciplinary program. Under the circumstances, the Board cannot conclude that a 30-Day Record Suspension is excessive, extreme, or arbitrary, especially considering the employee's past record of other Serious violations.

AWARD

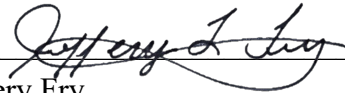
Claim denied.



Jeanne M. Vonhof
Neutral Member and Chairperson



Michelle McBride
Carrier Member



Jeffery Fry
Employee Member

Award Date: **January 8, 2025**