

Public Law Board No. 7048

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

Members of Board:

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 Adrian Renfro (1779685), seniority date August 25, 2008, for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for:

1. Straight time for each regular workday lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service);
2. Any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service;
3. Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended;
4. Health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed from service commencing July

15, 2022, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

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, Adrian Renfro, received a notice for an investigation for his alleged failure to maintain minimum powerline clearance while operating the boom on vehicle 23315, which resulted in the boom contacting an energized power line, causing damages to the boom and the vehicle on June 24th, 2020, at approximately 1015 hours near mile post 233.13 on the Fort Worth Subdivision. As a result of that investigation the Carrier concluded that the Claimant was in violation of MWSR 17.2.5 Power Line Clearance. The Carrier dismissed the Claimant for this violation via letter dated July 15, 2022.

On June 24, 2020, the Claimant was assigned to pick up scrap using a rotary grapple dump truck with a folding boom attached. The Operator can swing the boom over the truck and pick up scrap and dump it into the bed of the truck. The truck was operating under power lines and the boom hit a power line. An electrical charge went through the Carrier's vehicle, causing a rear tire to blow out and a burn on the boom. He called his Roadmaster immediately and reported what had occurred. The Claimant was not hurt, but he was "shook up," as both he and his Roadmaster reported. The truck was operational, but the Carrier did a full diagnostic on the truck, to determine whether the truck's electrical system or hydraulic boom had been affected by the accident.

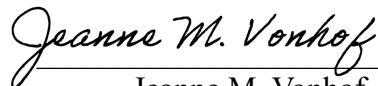
There is substantial evidence that the Claimant violated the Carrier's powerline rule, MWSR 17.2.5 Power Line Clearance, which requires that an Operator remain 45 feet away from a powerline of unknown voltage. The Claimant said that he knew about the rule, but did not know the distance he was required to maintain. Nevertheless, the Claimant knew that actually hitting the powerline was clearly prohibited.

The Organization argues that the Claimant was navigating in between multiple obstructions and with other hazards on the ground. He was operating the grapple truck so as not to foul the tracks; not to block a roadway; to avoid muddy ground; and to avoid a telephone box with a "Danger. Do Not Dig" sign on it. The power line pole was actually across the road from the scrap pile. Nevertheless, the Claimant had a responsibility to monitor not only the obstacles on the ground, but also potential danger from the powerlines directly overhead of where he was operating the boom. The Claimant had been operating this truck for about five years and should have known the height of the boom when it is raised and should have been aware of the powerlines overhead.

The Organization argues that there is no evidence that the Claimant intentionally hit the powerlines; he immediately reported the incident; and he did not try to hide his conduct. Nevertheless, contact with powerlines can cause serious injury, or in the worst case, death, as Roadmaster Brown testified. The Claimant was very fortunate in not suffering any injury. Nevertheless, his conduct created a substantial safety hazard and rule violations which cause a significant risk of injury are dismissible in themselves. In addition, the Claimant was in a review period for another Serious violation involving a safety hazard. The Board cannot conclude that, under these circumstances, dismissal is arbitrary or excessive for this conduct.

AWARD

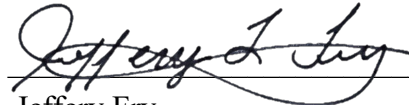
Claim denied.



Jeanne M. Vonhof
Neutral Member and Chairperson



Michelle McBride
Carrier Member



Jeffery Fry
Employee Member

Award Date: **January 8, 2025**