

**PUBLIC LAW BOARD NO. 7564**

Case No. 115/Award No. 115  
Carrier File No. 10-21-0020  
Organization File No. C-21-D040-1  
Claimant: E.J. Hofpar

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BNSF RAILWAY COMPANY )  
 )  
 -and- )  
 )  
BROTHERHOOD OF MAINTENANCE )  
OF WAY EMPLOYEES DIVISION )  
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**Statement of Claim**

By letter dated October 6, 2020, Mr. E.J. Hofpar received a Level S combined suspension (27 days actual, 3 days record) and a one-year review period because of his alleged “failure to stop short of a regulator while operating a tamper (X5400366), resulting in impact and machine damage to the tamper on the O’Neill Subdivision at approximately 1150 hours on September 9, 2020.” The Claimant allegedly violated MWOR 6.51, Maintaining a Safe Braking Distance.

The Organization’s claim dated November 12, 2020, from Randy S. Anderson, Vice General Chairman, appealed the discipline and characterized it as excessive and prejudicial. The Organization requested that the discipline outlined in the letter received by the Organization on October 9, 2020, be “overturned...and...[Claimant’s] personal record be cleared of the discipline and any mention of the investigation” and that Claimant “receives all hour of pay, both time and overtime hours he lost while being unjustly held from service for 27 days pending results of [the] investigation.”

**Facts**

By letter dated September 10, 2020, the Claimant received notice that “[A]n investigation has been scheduled at 1000 hours, Friday, September 18, 2020 at ... Fremont NE ... for the purposes of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to stop short of a regulator while operating a tamper (X5400366), resulting in impact and machine damage to the tamper on the O’Neill Subdivision at approximately 1150 hours on September 9, 2020.”

### **Carrier Position**

The Carrier avers that the investigation was fair and impartial. Further, Claimant's admission provided substantial evidence regarding the violation.

### **Organization Position**

The Organization asserts that the investigation was not fair and impartial. Claimant was presumed guilty of the charges before the hearing. Moreover, the Carrier failed to meet its burden of proof because the record lacks sufficient facts and evidence.

### **Findings**

Claimant is charged with violating MWOR Rule 6.51, Maintaining a Safe Braking Distance which provides that "it is the responsibility of all on-track equipment operators to maintain a safe distance between their equipment and all employees and other equipment within their work zones."<sup>1</sup> Further, "[R]oadway workers must not enter a machine's work zone without first Communicating with the operator to establish safe work procedures."<sup>2</sup> During the investigation, Claimant admitted he violated MWOR Rule 6.51 by backing into a machine. Claimant's admission provided substantial evidence regarding the violation.<sup>3</sup> The Carrier's Policy for Employee Performance Accountability ("PEPA") classifies this violation as a serious offense. PEPA, Section IV (C), Serious Violations (Level S) (1)(a) states the following:

Serious Violations include ... a violation of any work rule or procedure that is intended to protect employees, the public and others from a potentially serious injury or fatality.

The discipline assessed was in accordance with PEPA's Violation Handling Matrix.

### **Award**

Claim denied.

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<sup>1</sup> Carrier Exhibit 4.

<sup>2</sup> Carrier Exhibit 5.

<sup>3</sup> Carrier Investigation p.29-30, 32-33.

**Order**

This Board, after consideration of the dispute identified above, hereby orders that no Award favorable to the Claimant be made.



Zachary Voegel, Organizational Member



Joe Heenan, Carrier Member



Melinda Gordon, Neutral Referee

DATED: June 20, 2023