

PUBLIC LAW BOARD NO. 7564

Case No. 119/Award No. 119
Carrier File No. 10-21-0055
Organization File No. C-21-D040-5
Claimant: S.A. Wall

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim

By letter dated September 23, 2020, Mr. Steven A. Wall was issued a Level S 30-day record suspension and a Three-Year Review Period because of his alleged failure “to safely operate Regulator X0600446 when [he] did not yield at a highway crossing and caused an accident on July 27, 2020 at approximately 0915 hours at or near MP 123.06 on the St Joseph subdivision while working as a regulator operator.” The Claimant allegedly violated MWOR 6.50.2 Approaching Road Crossings at Grade.

The Organization’s claim dated November 11, 2020, from Randy S. Anderson, Vice General Chairman, appealed the discipline and characterized it as unjustified and excessive. The Organization requested that the discipline outlined in the Carrier’s letter dated September 23, 2020, be “overturned, and Mr. Wall’s personal record be cleared of this discipline and any mention of this investigation.”

Facts

By letter dated July 31, 2020, the Claimant received notice that “[A]n investigation has been scheduled at 0900 hours, Friday August 7, 2020, at...Lincoln, NE...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to safely operate Regulator X0600446 when you did not yield at a highway crossing and caused an accident on July 27, 2020 at approximately 0915 hours at or near MP 123.06 in St. Joseph, MO while working as a regulator operator.” After a postponement by mutual agreement, the investigation occurred on August 25, 2020, at 0900 hours.

Carrier Position

The Carrier avers that the investigation was fair and impartial and demonstrated by substantial evidence that Claimant violated MWOR 6.50.2 by failing to yield the right of way to vehicular traffic at the grade crossing. Claimant admitted that he saw the pickup truck as he entered the crossing, but proceeded because he thought the pickup truck was far enough away. The Carrier contends the assessed discipline was not excessive, arbitrary, or unjustified.

Organizational Position

The Organization asserts that the investigation was not fair and impartial. Claimant was presumed guilty of the charges before the commencement of the hearing. The Organization maintains that the facts in this case clearly show that Claimant had the right of way and did not violate Rule 6.50.2 and that the Carrier failed to sustain its burden of proof.

Findings

The Carrier asserts Claimant violated MWOR 6.50.2, which specifies that on-track equipment (including those with activated track shunts) must approach road crossings at grade prepared to stop and must yield the right of way to vehicular traffic. Claimant testified that he was operating a Regulator on the day of the accident and did not yield the right of way to vehicular traffic at the grade crossing. The Claimant conceded that he saw a pickup truck as he entered the crossing but judged it sufficiently in the distance for him to proceed safely. The Carrier proved by substantial evidence that Claimant's actions violated MWOR 6.50.2.

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.

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