

**PUBLIC LAW BOARD NO. 7564**

Case No.: 37/Award No.: 37  
Carrier File No.: 11-13-0137  
Organization File No.: S-P-1683-G  
Claimant: Curtis McClendon

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

1. The discipline (Level S 30 Day Record Suspension) imposed upon Mr. Curtis McClendon by letter dated December 27, 2012 for alleged violation of MOWOR 1.2.5 Reporting, MOWOR 1.2.7 Furnishing Information, and MOWSR 1.2.5 Safety Rules, Training Practices, Policies and Injury Reporting Policy on November 26, 2012, for alleged failure to report a personal injury immediately to the proper manager, failure to give all the facts to those authorized to receive the information, and failure to comply with all the safety rules and policies, while assigned as Grinder Operator.
2. As a consequences of the violation referred to in Part (1) above, claimant Curtis McClendon shall now receive the remedy prescribed by the parties in Rule 40(G).

**Facts:**

By letter dated November 29, 2012, the Claimant was directed to attend an investigation on December 7, 2012 "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with the alleged violations that occurred approximately between 1000 and 1200 hours, November 26, 2012, while you were assigned as Grinder Operator (TRWX1740), resulting in a report that a case of personal injury while on duty was not reported prior to seeking medical attention. Alleged violations include but are not limited to failure to report a personal injury immediately to the proper manager, failure to give all the facts to those authorized to receive the information, and failure to comply with all safety rules and policies. The date BNSF received first knowledge of this alleged violation is November 28, 2012."

**Carrier Position:**

The Claimant received a fair and impartial investigation and was assessed fair and appropriate discipline. The Carrier's burden of adducing substantial evidence was met when the Claimant admitted that he had not informed Roadmaster Winans of the injury before going to the doctor. The Claimant was at fault as he was aware of lower back pain on the day of the injury. However, the investigation did not substantiate violations of MOWOR 1.2.5, MOWOR 1.2.7 or MOWSR 1.2.5. If the claim is sustained, the Claimant is due only the remedy called for in Rule 40.G.

**Organization Position:**

The Claimant received harsh, improper and excessive discipline even though the Carrier lacked substantial evidence. There is no dispute that he was injured and that he reported the injury within 72 hours immediately after being told by the doctor that the injury was work related. The policy the Claimant was said to have violated was written for supervision and was difficult to find.

**Findings:**

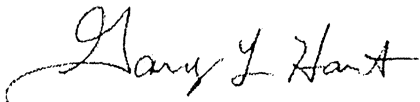
The Board notes that in the March 14, 2013 reply to the Organization's appeal, General Manager Johnson wrote, "I agree with you that it was not proven Mr. McClendon violated MOWOR 1.2.5 Reporting, MOWOR 1.2.7 Furnishing Information, or MOWSR 1.2.5 Safety Rules. Mr. McClendon's personnel record will be corrected to remove these charges and rule violations. This leaves only the Injury Reporting Policy. The Board agrees with the Organization that the policy reads as though it was primarily written for supervision. The Board further agrees that the investigation showed that the policy was hard to access. If the Carrier is going to promulgate and enforce policies, it has the obligation to ensure that the employees have reasonable access to such policies. That has not shown to be the case with regard to the Injury Reporting Policy. While the Claimant knew of the policy in general, he seemingly was not made aware of the policy in great detail. Moreover, the Carrier cannot rely on the inclusion of the Injury Reporting Policy in PEPA, Appendix A because that contention was not raised as an allegation and PEPA was not introduced during the investigation to show a violation. The Carrier has every right to enforce reasonable rules and policies of which the employees have been made thoroughly aware, but the shortcomings in this case mean that the Injury Reporting Policy cannot be enforced.

**Award:**

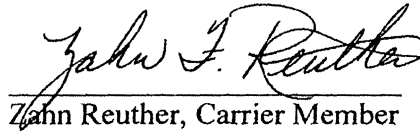
Claim sustained.

**Order:**

The Board, after consideration of the dispute identified above, hereby orders that the record of the Claimant be cleared. The Carrier is to make the award effective on or before the thirtieth (30<sup>th</sup>) day after the award is adopted.



Gary Hart, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas  
April 23, 2015