

**PUBLIC LAW BOARD NO. 7564**

Case No. 56/Award No. 56  
Carrier File No. 10-15-0093  
Organization File No. C-15-D040-8  
Claimant: Ruben M. Valencia

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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 December 1, 2014, Track Inspector Ruben Valencia was given a Standard Formal Reprimand and a one-year review period for an alleged violation of MOWSR 12.1 Operation of Motor Vehicles. The January 2, 2015 claim from the Organization, Vice General Chairman George Loveland, appealing the discipline, includes the request that the discipline "be overturned, [Claimant] be compensated for any time lost and that this discipline be removed from and no mention of this be placed on his personnel record."

**Facts:**

By letter dated October 14, 2014 the Claimant was informed that "An investigation has been scheduled at 1030 hours, Friday, October 24, 2014, . . . for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged vehicle accident when you failed to yield right of way to oncoming traffic on 10/9/14 at approximately 1415 hours using BNSF Vehicle 22534 at the intersection of Mountain and Farnsworth in Aurora, while working as Track Inspector, gang ID 1077."

After a mutually agreed upon postponement, the investigation took place on November 7, 2014 at the initially-specified location in Aurora, IL. The notice of investigation had been amended to indicate that Inspector Valencia had been cited by the Aurora Police Department.

**Carrier Position:**

The Carrier points to the undisputed fact that the Claimant was cited by the Aurora P.D. for failure to yield the right of way. Thus, the required substantial evidence exists of his responsibility for the accident. Leniency, if any, would be the Carrier's prerogative and not the

Board's. The Organization has not shown that there were procedural or due process errors that harmed the Claimant.

**Organization Position:**

The Organization asserts that Claimant Valencia did not receive a fair and impartial investigation as the Carrier has not proven the charges, providing only hearsay evidence. Moreover, the Organization's objections during the proceedings were not ruled on but simply noted for the record. There was no willful violation of traffic law, as the other driver's turn signal indicated a turn, which was not made. The discipline letter, which set out punitive discipline, was signed by the Division Engineer, who was not the Conducting Officer and who did not attend the investigation. The Carrier's refusal to pay the Claimant for attending the investigation amounted to pre-punishment.

**Findings:**

The Carrier itself is on record as stating that the best process occurs when the Conducting Officer also signs the letter imposing discipline. The Board agrees, but observes that there is no contractual mandate that the best practice be maintained. The Board does consider the signer of the disciplinary notice to be part of the investigation process and thus held to the "fair and impartial" requirement. The Organization correctly points to the Carrier's reliance on hearsay evidence—a reliance that will not always fulfill the requirement to provide substantial evidence. This is not the case herein because of the Claimant's admission that he was involved in the accident and was cited for failing to yield the right-of-way. There is abundant precedent for the notion that an admission satisfies the substantial evidence requirement.

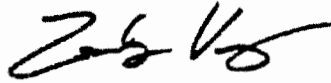
The Claimant made the very human error of trusting another driver's turn signal rather than driving defensively to protect himself in case the turn signal amounted to a mis-signal. Unfortunately, the failure to yield the right-of-way when the other driver did not turn, the resulting accident and thus the violation of MOWSR 12.1 Operation of Motor Vehicles ensued. While sympathetic to the Claimant, the Board sees no basis for setting aside the Standard Formal Reprimand.

**Award:**

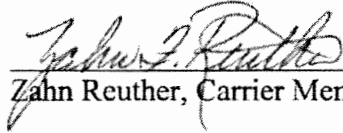
Claim denied.

**Order:**

The Board, after consideration of the dispute identified above, hereby orders that no award favorable to the Claimant be entered.



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn, Neutral Referee

Austin, Texas  
August 15, 2017