

**PUBLIC LAW BOARD NO. 7564**

Case No. 70/Award No. 70  
Carrier File No. 10-16-0059  
Organization File No. C-16-D040-2  
Claimant: Jason A. Conn

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

**Statement of Claim:**

By letter dated October 23, 2015, Foreman Jason A. Conn was assessed a Standard 10-Day Record Suspension and a One (1) Year Review Period for an alleged violation of MWSR 12.1 Operation of Motor Vehicles. The December 4, 2015 claim from the Organization, Vice General Chairman James L. Varner, appealing the discipline, characterized the discipline as "excessive and without merit" and asked that it "be removed from his [Claimant's] records in accordance with Rule 40 of the current agreement."

**Facts:**

By letter dated August 24, 2015 the Claimant was informed that "An investigation has been scheduled at 1300 hours, Saturday, August 29, 2015, at the BNSF Conference Room, 1212 W. 24<sup>th</sup> St, Cheyenne, WY, 82001, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly operate company vehicle 21715 resulting in collision on August 14, 2015."

A letter dated August 28, 2015 indicated mutual agreement to postpone the investigation until 0800 hours, September 24, 2015 and to change the location to the conference Room, 3700 Globeville Road, Denver, CO, 80216.

**Carrier Position:**

The Carrier insists that substantial proof was obtained with the Claimant's admission that he did not operate the vehicle "safe enough." The discipline was proper as it was in accordance with the Policy for Employee Performance Accountability (PEPA), Appendix A. The Organization now asks for leniency, which is the province of the Carrier, not the Board, nor should the Board substitute its judgment for that of the Carrier. Alleged procedural shortcomings have not been shown to have prejudiced the Claimant or the Organization.

**Organization Position:**

The Organization avers that the investigation was not fair and impartial and that the Claimant's due process rights were not respected. The Carrier's case is based on "opinion, innuendo, and speculation because Carrier witnesses had no first-hand knowledge of the accident. There is no proof that a citation was issued to the Claimant and no damage reports are in evidence. The accident was unavoidable and the discipline is "arbitrary and excessive."

**Findings:**

The Organization has not shown that the investigation was not fair and impartial or that the Claimant did not receive due process. The discipline was not based on "opinion, innuendo and speculation" as the claimant, to his credit, forthrightly testified that he rear-ended the vehicle in front of him, that his Carrier vehicle sustained minor front bumper damage and a cracked grill and that the original unsafe driving citation was reduced to an unsafe lane change citation, of which he was guilty. These admissions constitute substantial evidence that MWSR 12.1 Operation of Motor Vehicles was violated. While the Claimant and all concerned surely regret the accident, the Board cannot ignore reality.


**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, Organization Member

  
Zach Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas  
January 31, 2018