

PUBLIC LAW BOARD NO. 7564

Case No. 88/Award No. 88
Carrier File No. 10-18-0066
Organization File No. C-18-D040-9
Claimant: Richard Williams

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

Statement of Claim:

By letter dated October 17, 2017, Truck Driver Richard Williams was assessed a Level S 30 Day Record Suspension and a One Year review period for his alleged “failure to remain alert and attentive and properly operate company vehicle in a safe and careful manner, resulting in a collision with a motorcycle on September 6, 2017. The Claimant was said to have violated MWOR 1.1.2 Alert and Attentive, MWSR 12.1 Operation of Motor Vehicles and MWSR 12.14.6 Commercial Motor Vehicle Safe Operation. By letter dated December 10, 2017 the Organization, Jim L. Varner, Vice General Chairman, filed a claim on Mr. Williams’ behalf. The claim requested that the discipline, “excessive, unfounded and without merit . . . be removed from his (Williams’) records in accordance with Rule 40 of the current agreement.”

Facts:

By letter dated September 8, 2017 the Claimant was informed that:

An investigation has been scheduled at 0800 hours, Thursday, September 21, 2017, at the Conference Room, 3700 Globeville Road, Denver, CO, 80216, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to remain alert and attentive and properly operate company vehicle in a safe and careful manner, resulting in collision with motorcycle on September 6, 2017.

Carrier Position:

The Carrier contends that the Claimant received a fair and impartial investigation that produced substantial DriveCam evidence that he did not come to a complete stop at the stop sign, having possibly stopped 20-25 feet prior to the sign. The DriveCam evidence was properly in the record and the Organization’s contention that DriveCam evidence was not properly in the record should be considered in a different forum. The discipline assessed was in accordance with the Policy on Employee Performance Accountability (PEPA).

Organization Position:

The Organization asserts that the investigation was not fair and impartial and that the Claimant was denied due process. Roadmaster Paz's testimony was based on assumptions, but he cannot prove that the Claimant did not come to a full stop near the sign at the intersection. The Carrier presented only nine (9) of the twelve (12) DriveCam still shots, omitting three that might have told a different story. Moreover, there is evidence that the DriveCam is not always 100% accurate. Use of the DriveCam is inappropriate; thus, the related evidence should not have been in the investigation record. Motor vehicle Operators have not received proper DriveCam training. The Claimant's actions were mitigated by the vegetation that blocked the view of oncoming traffic and by the excessive speed of the motorcyclist. At the intersection, the Claimant looked both right and left, thus showing that he was alert and attentive.

Findings:

The accident that resulted in the Claimant's discipline occurred at the intersection of Logan St. and 44th Avenue in Denver, CO. The Claimant, traveling south on Logan St., was required to stop at the intersection. The motorcyclist, traveling west on 44th Avenue, did not have a stop sign on what was the through street. The DriveCam evidence and the Claimant's own testimony combine to dictate the outcome of the Board's inquiry.

While the Organization contends that use of the DriveCam violates federal law, that contention is without support, as the evidentiary record is devoid of documentation that establishes a violation of federal law and there is no reference to any prior awards, on-property or otherwise, that prohibit the Carrier's use of the DriveCam technology. The Claimant was neither deprived of due process nor given an investigation that was not fair and impartial because of the use of the DriveCam evidence or for any other reason apparent to this Board.

The DriveCam evidence indicates that the Claimant slowed, but did not come to a complete stop at the intersection. The Claimant has stated that he came to a complete stop 20-25 feet or 6.7-8.3 yards before the stop sign. If his view was impeded by foliage, then stopping before the actual intersection can be viewed as imprudent. Even without the foliage, a prudent driver would stop at, and not away, from the intersection in order to get the best view of oncoming traffic.

Even assuming that the motorcyclist was traveling too fast, because the Claimant did not have the right-of-way, it was his responsibility to factor in the speed of the motorcycle before pulling into the intersection. Moreover, it was the Claimant who was cited by the Denver Police Department for failing to yield. The Organization has provided no indication that the citation was cancelled for any reason. The Claimant has been shown to have been the at-fault driver. Thus, the Carrier has provided substantial evidence that the rules entered in evidence during the investigation and set forth in the notice of discipline have been violated.

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



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas
April 29, 2019