

PUBLIC LAW BOARD NO. 7566

BROTHERHOOD OF MAINTENANCE OF)	Case No. 102
WAY EMPLOYES -- IBT RAIL CONFERENCE)	Award No. 102
)	
and)	
)	
CANADIAN NATIONAL/WISCONSIN)	
CENTRAL LTD.)	
)	Claimant: Todd Smith-Bunge

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The dismissal of Mr. T. Smith-Bunge for alleged violation of USOR – General Rule A – Safety, USOR – General Rule C – Alert and Attentive, USOR – General Rule F – Alert to Train Movement and USOR – General Rule H – Furnishing Information and Conduct in connection with its allegation that there was a collision between the welding truck Claimant was operating and a train on September 18, 2014 on the Iron Range Subdivision near Mile Post 53.6 is based on unproven charges, disparate, excessive and in violation of the Agreement (Carrier’s File WC-BMWED-2015-00009 WCR).
2. As a consequence of the violation referred to in Part 1 above, Claimant Smith-Bunge’s personal record shall be cleared of the charges immediately and he shall be made whole in accordance with Rule 31 of the Agreement.”

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7566 has jurisdiction over the parties and the dispute involved herein. Parties to said dispute were given due notice of hearing thereon.

The Carrier argues that Claimant was properly dismissed for an incident in which the welding truck he was driving struck a train and resulted in serious injury and damage. The Carrier continues that the testimony and the expert’s report indicate that Claimant did not operate the welding truck in a safe manner. The Carrier also rejects the Organization claim that the expert was somehow tainted by his communications with Carrier outside counsel because no opinions or conclusions were altered. According to the Carrier, this is not a situation where an employee was found to be at fault merely because an accident occurred. Rather, the Carrier points to the evidence in support of the conclusion that Claimant was not operating his vehicle in a safe manner when he struck the train.

The Organization responds that the investigation did not inquire about Rule H violations. The charges changed based upon the statements of the expert and the expert presented flawed

testimony and conclusions. The expert readily admitted to not considering the welding truck GVW in his calculations and also compared ore pellets to gravel – despite ore pellets being the size, shape, and consistency of a child’s marble. Claimant cannot be found to lack alertness and attentiveness when his vehicle did not operate properly.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier’s judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier’s actions were an abuse of discretion.

A review of the record indicates that there were no procedural violations which void the discipline. On the merits, this Board finds that there is substantial evidence in the record to support the findings. The evidence established that Claimant was operating a truck and struck a train. There was a scene reconstruction and an examination of the welding truck wreckage. The expert concluded that the vehicle was operated in a manner that led to the crash. The brakes were not malfunctioning and the vehicle was traveling too fast for conditions.

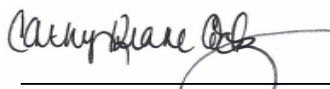
The Board notes that the Organization took exception to the expert’s use of gravel as a comparison to ore pellets during the investigation. However, the distinction begs a question. Claimant was a welder and regularly drove a welding truck. He would have been familiar with ore pellets, as the Organization cited them as a common issue at the location. He knew how loose ore pellets affected stopping distances. The brakes were working and a crash ensued. The Carrier’s findings were not against the weight of the evidence and there is substantial evidence in the record to support the Carrier’s conclusions. A review of the evidence indicates that the Carrier did not abuse its discretion when it imposed the discipline of termination.

Award:

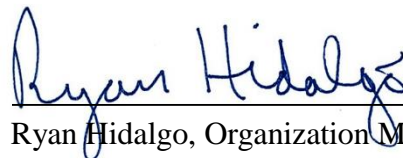
Claim denied.



Brian Clauss, Chairman



Cathy Cortez, Carrier Member



Ryan Hidalgo, Organization Member

Signed on July 24, 2018