

P.L.B. No. 7585
Case No. 22
Award No. 22

PUBLIC LAW BOARD NO. 7585

CARRIER FILE NO. 10-13-0188

ORGANIZATION FILE NO. C-13-D040-8

CLAIMANT: Robert M. Jarvis

Parties To Dispute:

Brotherhood of Maintenance of Way Employees Division – IBT
& BNSF Railway Company

Statement of Claim: *The Carrier violated the Agreement on November 1, 2012 when it assessed Robert M. Jarvis a level S 30-day record suspension, with a 3-year review period, for alleged violation of MOWOR 1.1.1-Maintaining a Safe Course, 1.1.2-Alert and Attentive, MOWSR S-1.2.1 Right and Responsibilities – Sufficient Time, and S12.1.1-Operation of Motor Vehicles-General Requirements, for alleged failure to yield to oncoming traffic causing an accident near Baring, MO.*

Background Facts:

Claimant Jarvis was a Group II Lowboy Operator, having rested under hours of service on September 17, 2012. It was cloudy and sprinkling. He dropped off a trailer at Baring and was on the way to pick another one up. While traveling on K highway, he came to the intersection with Highway 15. There was a stop sign. Claimant stopped, asserts he looked both ways, then pulled out. At that point he saw an incoming Chevy pick-up. He

says he stopped again and was impacted by the truck. There was damage to both vehicles. Claimant suffered a broken bone in his hand and the three occupants of the Chevy were also taken to the hospital. Claimant was ticketed for failure to yield right of way. However, the Police Report shows the Chevy was traveling five miles over the speed limit, 55, and the occupants were not all wearing seatbelts. The Report includes an assertion by Claimant that an occupant of the Chevy admitted they were driving 70 mph. Claimant also testified that one of the Chevy occupants admitted to driving at 70.

Supervisor of Structures out of Fort Madison, Iowa, testified he investigated the incident, but mistakenly referred to the accident as having occurred on September 12 when the actual date was September 17. The Notice of Investigation also referred to the incident as having occurred on September 12. On this basis, the Organization argued the case should be dismissed.

The Carrier maintains the facts establish that Claimant failed to yield in violation of the cited rules. The Organization argues that if the case is not dismissed for fatal procedural error, it should be dismissed because Claimant violated no rule. In its view, he looked both ways and would have seen the Chevy had there not been a dip in the road and had the Chevy not been speeding.

Opinion of the Board:

The Board is not persuaded that this case should be dismissed due to the mistake about the date of the accident. There was never any question but that Lovelace was describing his findings upon arrival at the scene after the accident in question. There was no accident on the 12th regarding which witnesses became confused. There never was any question but that the investigation and the testimony were about the accident at the intersection between K Highway and Highway 15. As a result, the Board finds no adequate basis for dismissing the case.

The facts in evidence clearly establish that the Chevy was partly responsible for the accident. However, contrary to the Organization's assertion, this does not mean that

Claimant complied with all rules or should be completely absolved. Two mistakes caused this accident, and Claimant was responsible for one of them: he did not yield the right of way to an oncoming vehicle.

He asserts he would have seen the Chevy if it had been traveling at an accepted speed. This may very well be true and it does constitute a mitigating circumstance. The statement made by a passenger admitting to 70 mph constitutes an admission against interest and is not disproved. However, the dip in the road is not a mitigating circumstance, but a fairly common road characteristic which drivers must look out for.

Claimant pulled into the intersection when there was an oncoming vehicle and it was his obligation to stop long enough to make sure there was none. He was ticketed, and there was no claim that the violation was dismissed. This constitutes a violation of 12.1.1, which requires compliance with state and local laws and regulations. He did not wait to make sure there was no oncoming traffic, so he was in violation of the sufficient time requirement. He was not adequately alert to avoid the accident, in contravention of the Alert and Attentive requirement. Failure to yield violates S12.1.1 as well. Hence, weighing against the mitigation of the Chevy's speed is the number of rules that cover the situation. Given the need to transport all involved to a hospital and given the damage to both vehicles, it was not unreasonable for the Carrier to consider this a relatively serious incident. It follows that the Carrier's discipline was for sufficient cause.

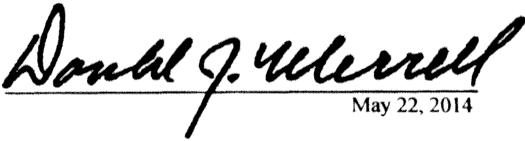
AWARD:

The claim is denied.



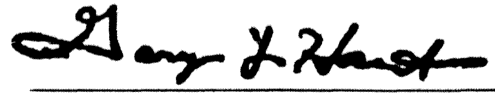
Patricia Thomas Bittel

Chair and Neutral Member



May 22, 2014

Donald Merrell,
For the Carrier



Gary Hart,
For the Organization

Dated: April 4, 2014