

**PUBLIC LAW BOARD NO. 7585**

**Case No. 38/Award No. 38**  
**Carrier File No.: 10-13-0639**  
**Organization File No.: C-13-D040-37**  
**Claimant: T.L. Anderson**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
-and- )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYEES DIVISION - IBT** )  
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**FACTS:**

On October 11, 2013, the Carrier issued Claimant Anderson a Level S 30-day record suspension with a one-year review period. It alleges that on Monday October 15, 2012 Claimant failed to wear a seat belt while operating a Spiker. The Organization disputes the propriety of the discipline and seeks to have it expunged and the Claimant made whole.

**CARRIER POSITION:**

Structures Supervisor Patrick Senf testified that on the day in question, he was on an Operations Testing Team. As the Team was finishing up, Senf left the area. While driving out, he noticed Claimant on the Spiker without a seat belt. Senf stated he observed Claimant for about a minute, then got out of his truck, walked over to Claimant and asked if he was wearing his seat belt. According to Senf, Claimant responded that he was not.

Senf said he asked Claimant if he knew this was a violation of the rules and Claimant responded "yes." Senf said he advised Claimant that he was going to enter a Failure for an Operations Test. He asserted Claimant was moving the equipment at the time of observation. He said it did not look like the gang was working, he said, because all the machines were moving. "Nobody was stopping and doing any work." (TR 25)

MOWSR 1.4.9 requires that employees wear seat belts when operating or riding in equipment or vehicles. MOWOR 1.6 prohibits employees from being careless of safety. Senf explained he considered the offense to be serious because he knew someone who died last year because he did not have his seat belt on.

### **ORGANIZATION POSITION:**

Claimant admitted not wearing a seat belt on the day in question. He contended he was not in travel mode, but was going from tie to tie, and at every other tie, he would have to get off the machine and put tie plates on the rail, then spike them up. He said he did not wear his seat belt while in work mode because he has to get on and off so often and estimated that he spiked about 100 ties that day. He denied that his choice was careless.

He admitted that the rules do not differentiate between work mode and travel mode. According to Claimant, he was traveling at 1 mph or less. He asserted he wore his seat belt all the way out of the hole and all the way to the job site. He calculated that tie to tie is 38 inches, though at times he was working every fifth tie.

Claimant submitted a photograph of a contractor traveling on a machine without a seatbelt. He said when Senf approached, he was out of the machine getting ready to put a plate under the tie. He claimed that if there had been laborers to place the ties, he would have stayed in his seat with his seat belt on.

The Organization maintains the Carrier's rule is both unreasonable and unproductive. In its view, the expectation that an employee fasten a seatbelt to move only two feet is nonsensical. It concludes the Carrier has been arbitrary and overly harsh.

### **DECISION:**

The Carrier is responsible for establishing reasonable rules in order to ensure the safety of its employees. In pursuit of this goal, the Carrier has prohibited moving equipment without wearing seatbelts.

Claimant argues that the rule is nonsensical in the context of moving as little as two feet before having to dismount. The problem with this argument is that it would give the employee the option of deciding how far is far enough to warrant a seat belt. It transforms an easily understood rule into a vague and unknowable one, where the employee is left to guess when a seatbelt is required.

In the view of this Board, the Carrier has a right to establish a flat, easily understood rule. It is for the Carrier to assess and assume the cost of nonproductivity. BNSF has presumably done this and decided it is more important for employees to be safe than it is for them to be efficient in mounting and dismounting from their seats. This is a managerial choice, not subject to second guessing by employees.

The Carrier was reasonable in establishing a flat rule requiring seatbelts. Claimant violated this rule.

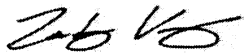
### **AWARD:**

The claim is denied.

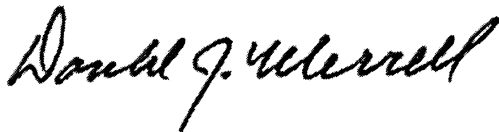
September 2, 2015

A handwritten signature in black ink, appearing to read "Patricia T. Bittel". The script is cursive and fluid.

Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, appearing to read "Zach Voegel". The script is cursive and fluid.

Zachary Voegel, Labor Member

A handwritten signature in black ink, appearing to read "Donald J. Merrell". The script is cursive and fluid.

D. J. Merrell, Carrier Member