

**PUBLIC LAW BOARD NO. 7585**

**Case No. 48 /Award No. 48  
Carrier File No.: 10-14-0257  
Organization File No.: C-14-D040-19  
Claimant: Richard C. Brodt**

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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 May 29, 2014, the Carrier assessed a Level S 30 day Record suspension with a one-year review period against Claimant Richard C. Brodt for violation of MOWOR 1.6 - Conduct, MWSR 12.1 – Operation of Motor Vehicles and MWSR 12.1.1 – General Requirements. The Carrier alleges he failed to maintain a safe course when operating vehicle 12422 on the Brookfield Subdivision, resulting in damage to a signal appliance.

**CARRIER POSITION:**

Claimant's supervisor, Roadmaster Ken Pickens, stated he received a call on April 17 advising that Claimant had struck something with his welding truck. Pickens interviewed the employees present on the scene and was told a co-worker, David Bernhart was guiding Claimant through signal equipment, when Claimant drove ahead of him and sank into some soft sand. The truck slid to the left and impacted a signal box. According to Pickens, the estimated damage to the signal appliance was \$10,000. Pickens said he asked Claimant why he did not wait for Bernhart to guide him out, and Claimant replied he did not know. According to Pickens, Claimant failed to keep the vehicle under control.

**ORGANIZATION POSITION:**

In the Organization's view, it was a denial of due process to allow someone other than the hearing officer to make the disciplinary determination. It also asserts the hearing officer was not fair and impartial in that he failed to rule on objections and badgered the Representative for making them. In addition, the Organization felt the proceeding were unfair because requested pre-hearing information was denied.

The Organization noted that at the beginning of the hearing, the hearing officer stated "Only questions that pertain to this event will be allowed. Questions that do not pertain

to this event will not be allowed." The Organization interpreted this as restricting the questioning exclusively to matters articulated in the Notice of Investigation. It objected to all questions on topics not specifically mentioned there.

Pickens acknowledged that the Galesburg Terminal is on the Ottumwa Subdivision, not Brookfield. The Organization argues Claimant was not present at MP 164.7X on the Brookfield Subdivision at the Galesburg Terminal, as stated on the Notice of Investigation. Hence, in its view, the Carrier has no right to discipline him.

The Organization asserts Claimant did not intentionally try to damage any property. In addition, no proof was given to support the allegation that the damage amounted to \$10,000, though Organization did not object to Picken's testimony regarding value during the hearing.

Claimant acknowledged that co-worker David Bernhart was trying to guide him out of the location, and admitted he went ahead of Bernhart. He stated he did this because there was not enough room for Bernhard when the truck passed through.

#### **DECISION:**

The Notice of Investigation stated in part:

An investigation has been scheduled ... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to maintain a safe course when operating vehicle 12422 on April 17, 2014 near MP164.7X on the Brookfield Sub at the Galesburg Terminal while assigned as a Grinder on TRWX0568 in the Chicago Division, which resulted in damage to a signal appliance.

Brookfield Subdivision MP 164.7X was directly adjacent to the location where Claimant hit the retarder. This was established by way of a drawing by Pickens, with which Claimant concurred. The Board does not find the Notice inadequate in its function. It put the Organization and the Claimant on notice of the date and the nature of the incident. Both the Organization and the Claimant knew full well what incident was being addressed.

It was not a denial of due process to allow a person other than the hearing officer to make the disciplinary decision in this case. There were no important credibility issues to be resolved. Claimant acknowledged that he was driving the truck when the signal appliance was damaged. Witnesses do not need to be observed to analyze the facts of the case.

Picken's testimony was adequate to establish the general value of the appliance of concern. Even if his testimony were eliminated for inadequate objective support, the fact remains that Carrier property was damaged and the question remains regarding applicable rules.

MWSR 6.1 requires a vehicle driver to operate a motor vehicle in a careful and safe manner. MOWOR 1.6 prohibits negligence or carelessness of the safety of oneself or others. The evidence is unrefuted that Claimant went ahead without waiting for Bernhart to walk ahead and guide him. This was a decision to accept avoidable risk. To leave one's guide behind is to leave behind the safety offered by guidance. In this instance, the area was thick with the Carrier's equipment. It follows that the cited rules were violated.


**AWARD:**

The claim is denied.

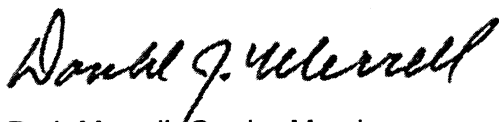
July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member