

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 53
Carrier File No.: 10-15-0231
Organization File No.: C-15-D040-17
NMB # 106
Claimant: R. L. Kuwamoto

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYES DIVISION - IBT)

FACTS:

Claimant was issued a Level S, 30-day record suspension and one year probation for driving a Company vehicle in violation of seat belt requirements on March 2, 2015.

CARRIER POSITION:

The Carrier relies on DriveCam which shows the Claimant with his shoulder strap under his arm. It deems this a violation of rules requiring the use of Safety Equipment.

Claimant testified that he was wearing a seat belt across his lap and underneath his arm. He stated he wore it this way because it rubbed across his neck. The Carrier notes Nebraska law requires restraints be "properly adjusted and fastened."¹ It maintains diagrams in the owner's manual show that the strap must go over the shoulder and that wearing it under the shoulder is improper. It concludes the seat belt was not being worn properly as required by Nebraska law.

ORGANIZATION POSITION:

The Organization maintains Claimant was not given reasonable notice that he was in violation of Company rules. He was wearing a seat belt as required by S-12.1.2. In its view, it is not reasonable to have a rule requiring that he comply with the law, then expect him to know that Nebraska law requires restraints to be properly adjusted then to further know that the owner's manual in his truck will be used to establish proper adjustment -- with disciplinary consequences.

¹ Revised Statute 60-6, 270.

DECISION:

Maintenance of Way Safety Rule 12.1.1, states:

Every company vehicle driver must:

- Know and obey local, state, and federal laws and regulations for operating vehicles, both on and off company property.
- Comply with all rules and procedures listed in the BNSF Company Vehicle Policy and Procedure Manual for operating company or temporary replacement vehicles.

BNSF Company Vehicle Policy states:

1. The vehicle operator and all passengers of BNSF vehicles must use seatbelts. * * *
5. Vehicle operators and vehicle occupants must wear seat belts while operating or riding in Company vehicles. Vehicle occupants are prohibited from lying down while wearing seat belts.

Maintenance of Way Safety Rule 1.4.3 requires employees to “Read and follow the manufacturer's specifications when using tools and equipment.”

It is a fundamental aspect of the just cause analysis that employees must be made reasonably aware of a rule before that employee can be disciplined for its violation. There is no evidence that Claimant's employer ever reviewed with him the Company's apparent requirement that a seat belt strap must be worn over the shoulder.

The rules fail to give Claimant adequate notice of his obligation to wear his seat belt as pictured in the Owner's Manual. Any rules relating to vehicular operation would reasonably be found in the BNSF Company Vehicle Policy. That is the place where seat belts are discussed. The Manual even goes so far as to warn against wearing a seat belt while lying down. However, no mention is made in this Manual of either a requirement to wear seat belts over the shoulder or a requirement to wear it in accordance with the pictures in the Owner's Manual.

As BNSF points out, there is a rule requiring employees to know and follow Nebraska law. However, it is a stretch for an employee to deduce that the statutory requirement of “proper adjustment” would be enforced by way of referral to an Owner's Manual. Would a Nebraska peace officer issue a ticket if someone wore a seat belt under his arm? The answer is not discernable from the record. In any event, vehicular owner's manuals are not generally perceived by employees as setting forth enforceable rules. Vehicular owner's manuals were not incorporated by reference into BNSF's Vehicle Policy.

The Company's position is, in essence, that the Company truck Owner's Manual is incorporated by reference into the disciplinary rules via S-1.4's reference to manufacturer specifications. S-1.4, by its terms, addresses "Tools and Equipment." Certainly equipment in a general sense includes trucks, but this does not answer the notice question posed here.

Rules specific to vehicles and rules addressing seat belts are not simply found in S-1.4. Instead, rules specific to vehicles and rules addressing seat belt use are found in the BNSF Company Vehicle Policy. A reasonable employee would look to the Company Vehicle Policy for rules about seat belts when operating Company trucks. Such an employee would find nothing addressing how a seat belt is worn; instead the focus is on whether the seat belt is attached, not how the attachment is accomplished. It follows that the reasonable employee who searches the Company's Vehicular Policy for seat belt requirements has not been placed on adequate notice that the strap must go over the shoulder. It follows that the Carrier has not put employees on adequate notice of its requirements regarding where seat belts touch the body. Claimant is entitled to a counseling advising him of the necessity of wearing his seat belt over his shoulder before he can be disciplined for failure to do so.

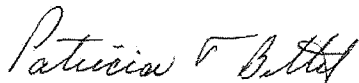
AWARD:

The claim is sustained. The discipline shall be removed from Claimant's record. The Carrier, if it so chooses, may place a non-disciplinary counseling letter in Claimant's file advising of the need to wear his seat belt over his shoulder.

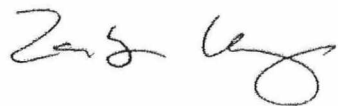
ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

November 29, 2017; Park City, Utah

A handwritten signature in cursive script, appearing to read "Patricia T. Bittel".

Patricia T. Bittel, Neutral Member

A handwritten signature in black ink, appearing to read 'Zach Voegel', with a stylized, cursive script.

Zachary Voegel, Organization Member

A handwritten signature in blue ink, appearing to read 'Zahn F. Reuther', with a stylized, cursive script.

Zahn Reuther, BNSF Member