

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 54
Carrier File No.: 10-15-0279
Organization File No.: C-15-D040-21
NMB 119
Claimant: D. T. Yarber

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

FACTS:

Claimant was issued a Level S, 30-day record suspension with a three year review period for failing to stop a Company vehicle before colliding with the rear of a Company van. This was deemed to constitute violation of MOWR 1.1.1 Maintaining a Safe Course and MWSR 12.1 Operation of Motor Vehicles. The Organization argues the discipline was unwarranted in view of the relevant facts.

CARRIER POSITION:

The Carrier relies on DriveCam which shows Claimant unmoving until he slammed on the brakes at 36 miles per hour at the last minute; he was unable to avoid collision. In the Carrier's view, this establishes that Claimant negligently failed to avoid collision in violation of applicable rules.

The Carrier dismisses Claimant's proffered excuse that the floor mat caught under the pedal until he readjusted it with his foot. It notes the DriveCam shows that he never even looked down. Roadmaster Ryan Wonola stated that Division Engineer Casey Turnbull folded up the floor mat multiple ways and stuffed it underneath the brake pad to see if the vehicle would still come to a stop and it did.

ORGANIZATION POSITION:

Claimant testified that the brakes did not go down all the way because the floor mat impeded the brake pedal. “[S]o when I, I looked down to see what was going on, I noticed my floor mat got slid up under my brake pedal. And I looked down to pull it back, and I didn’t get it stopped all the way in time and I, uh, ran in, bumped into the back of a BNSF van.”¹ The Organization maintains the reason DriveCam shows Claimant with his eyes closed is that Claimant blinked.

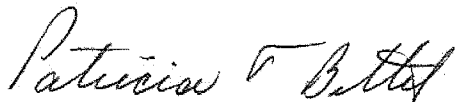
DECISION:

The evidence does not support Claimant’s story that the floor mat prevented him from stopping the vehicle. At no point in the DriveCam series does Claimant give any indication that he actually looked down as he claimed. It is not credible that he detected a barrier to using his brake and adjusted it with his foot without looking down. In the opinion of this Board, were the floor mat actually preventing an attempt to brake and if Claimant were trying without success to dislodge it, he would have looked down more than once. The likelihood that Claimant was blinking is not persuasive. Furthermore, the mat as barrier to brake function could not be recreated, thereby eroding the credibility of this as a reason for the failure to brake. It follows that the Carrier had an adequate basis for the discipline it issued.

AWARD:

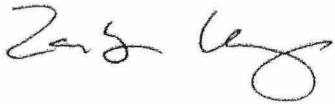
The claim is denied.

November 29, 2017; Park City, Utah

A handwritten signature in cursive script, reading "Patricia T. Bittel".

Patricia T. Bittel, Neutral Member

¹ TR 15

A handwritten signature in black ink, appearing to read "Zach Voegel". The signature is fluid and cursive, with the first name "Zach" and last name "Voegel" clearly distinguishable.

Zachary Voegel, Organization Member

A handwritten signature in blue ink, appearing to read "Zahn I. Reuther". The signature is cursive and stylized, with the first name "Zahn" and last name "Reuther" clearly distinguishable.

Zahn Reuther, BNSF Member