

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 61**  
**Carrier File No.: 10-15-0327**  
**Organization File No.: C-15-D070-10**  
**NMB 119**  
**Claimant: P. R. Pressler**

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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:**

Claimant was dismissed after causing a collision in July of 2015. At the time he was under a Level S Record Suspension for using a handheld device while operating a Company vehicle.

**CARRIER POSITION:**

Claimant failed to stop the Regulator machine he was operating, resulting in a collision with a Stabilizer machine. Claimant stated he was evening out the ballast line and "paying attention to the ballast" when he made contact with the Stabilizer, which was parked. In the Carrier's view, this constitutes an admission that he was not maintaining a safe braking distance in compliance with MOWOR 6.51, nor was he staying alert and attentive as required by MOWOR 1.1.2. In its assessment, these violations justify the discipline imposed.

**ORGANIZATION POSITION:**

The Organization argues that no one was injured in the incident and concludes there was no violation of Rule 1.1.2. It further notes the stabilizer was not damaged and the repair costs for the regulator must have been minimal since the Carrier did not submit them. It maintains Claimant has been honest throughout the investigation and the discipline was plainly excessive. It points out that just two days prior, Claimant had run over a buried tie and as a result, he was being

extremely alert and attentive to the ballast at the time of the incident, an assumption of responsibility for which he cannot reasonably be penalized.

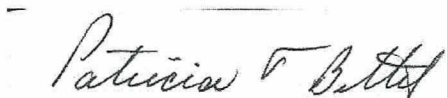
**DECISION:**

The Stabilizer machine was parked when Claimant ran into it. In the view of the Board, this means Claimant did not note his trajectory, the distance between his Regulator and the Stabilizer or whether there were obstacles in his way. Though it is certainly understandable that he was concerned about the ballast, given his experience two days prior, this concern cannot justify allowing his machine to collide with another machine. Rather, in order to be alert and attentive, and to maintain a safe braking distance, Claimant is required to be aware of where he is going and whether there is something in the way.

**AWARD:**

The claim is denied.

November 29, 2017; Park City, Utah



Patricia T. Bittel, Neutral Member



Zachary Voegel, Organization Member



Zahn Reuther, BNSF Member