

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 73**  
**Carrier File No.: 10-17-0324**  
**Organization File No.: C-17-D070-13**  
**Claimant: R. Arnett**

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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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**STATEMENT OF CLAIM:**

The Organization alleges BNSF violated the Agreement when Claimant was dismissed as a result of a formal investigation held on July 24, 2017, for Claimant's violation of Maintenance of Way Operating Rules 6.51 "Maintaining a Safe Braking Distance"; MWSR1.2.3 "Alert and Attentive" and MWOR 6.50 "Movement of On-Track Equipment" for his failure to stop within half the range of vision resulting in a collision between scrap tie crane (X6000358) and Tripp machine (X6300230) while he was assigned to a group 3/4 machine operator on TTPX0004.

**CARRIER POSITION:**

On July 17, 2017 a collision occurred, resulting in damage to the Tripp machine. In his statement taken after the collision, Claimant Arnett admitted that he lost focus when he ran into the Tripp machine, causing damage to the rear of its motor. Claimant had previously received a record suspension for a serious violation in 2015. Insofar as this was his second serious violation within the review period, the rules make it clear that he was subject to dismissal.

**ORGANIZATION POSITION:**

Claimant testified at the investigation that he was shaken by the incident and that is why his statement says he lost focus. He explained that in fact he was paying attention but there was quite a lot going on in the environment at the time. Further, the hearing officer and Carrier witness raised issues regarding stopping and following distances that were solely intended to mislead. It was purely an accident with minimal damage, making termination an unreasonable result.

**DECISION:**

It is uncontroverted in this case that Claimant was responsible for a collision. His admission at the time that he was inattentive is telling. His attempt to bury this confession during the investigation is not persuasive; confusion and activity in the environment should, if anything, raise the level of awareness.

The Carrier's burden is only to provide substantial evidence, and it has met this burden. The procedural flaws perceived by the Organization were not prejudicial and had no impact on the basic fact that Claimant was responsible for a collision. The Carrier's determination that this should constitute a serious offense is reasonable. Insofar as it was Claimant's second serious offense within the review period, he was subject to dismissal.

**AWARD:**

The claim is denied.

May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member