

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 92
Carrier File No.: 10-19-0146
Organization File No.: C-19-D040-13
Claimant: T. Freeman

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

STATEMENT OF CLAIM:

The Organization protests the Carrier's decision to issue a Standard Formal Reprimand with a one-year review period for his failure to remain alert and attentive while reversing in a BNSF vehicle, which resulted in an accident on November 8, 2018 at approximately 1730 hours (MST) in Gillette, Wyoming; in violation of Maintenance of Way Operating Rule 1.1.2 – Alert and Attentive.

CARRIER POSITION:

On the evening in question, Claimant Freeman was in an Albertson's parking lot attempting to back out of a parking place. Another vehicle was parked across from him, and began backing up at about the same time; the two vehicles backed into each other and collided. Claimant asserts without contradiction that the parking lot was poorly lit and it was snowing outside. His backup camera was unusable due to snow.

The Carrier maintains Claimant failed to be alert and attentive because he did not check his blind spots, did not clear his backup camera and attempted to back up with only his sideview mirrors. Claimant reported the incident and contacted the police who determined the accident was due to "improper backing." In the Carrier's view, Claimant's inattentiveness was more than sufficient basis for the disciplinary action taken.

ORGANIZATION POSITION:

The Organization asserts the discipline was excessive given Claimant's 25 years of service and the poor lighting in the area. It notes the accident was very minor with no damage to the Carrier's vehicle. It also notes Claimant responsibly reported the accident to the authorities as well as within the Company. In its view, it was a "no fault" accident; both cars backed into each other, and accordingly, Claimant should not be deemed the responsible party.

DECISION:

When Claimant put the vehicle into reverse, he knew or should have known that he was unable to see well enough to back up safely. At this point, he should have realized that the backup camera was of no use. This was all the more important in view of the snow and poor lighting in the area. Yet Claimant decided to go ahead and back up without cleaning off the camera. This determination was flawed. Despite the poor visibility, he proceeded to back up and impacted another vehicle. Though the other driver was also at fault, this does not make Claimant into an alert and attentive driver. It was Claimant's responsibility not to move the vehicle unless this could be done safely and he failed in this regard.

Claimant was hired in 1995. His 25-year record of service is marred by three prior disciplinary actions: a five-day actual suspension in 1997, a 30-day record suspension in 2010 and another 30-day record suspension in 2016. We find the Carrier gave both his record and the circumstances of the collision adequate consideration as mitigating circumstances; his discipline in this instance was a formal reprimand and not a suspension. The Carrier had substantial evidence to support its choice of penalty.

AWARD:

The claim is denied.



Patricia Thomas Bittel
Chair and Neutral Member

A handwritten signature in blue ink, reading "Samantha Rogers", is positioned above a horizontal line.

Samantha Rogers
For the Carrier

A handwritten signature in black ink, reading "Zachary C. Voegel", is positioned above a horizontal line.

Zachary Voegel
For the Organization

Dated: November 25, 2020