

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 95
Carrier File No.: 10-19-0168
Organization File No.: C-19-D040-14
Claimant: J. Riggs

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

STATEMENT OF CLAIM:

The Organization objects to BNSF's decision to issue a Level S Record Suspension with a 3-year review period for Claimant's failure to operate a motor vehicle in a careful and safe manner when he backed into the crossing gate at MP 133.6 on the Angora Subdivision on January 16, 2019 and then lied about his involvement when questioned by BNSF supervision, in violation of Maintenance of Way Safety Rule (MWSR) 12.1.1 – General Requirements and Maintenance of Way Operating Rule (MWOR) 1.6-Conduct.

CARRIER POSITION:

On January 16, 2019 Claimant was backing up his grapple truck in order to turn it around. While backing, the grapple seat struck the crossing gate signal light and knocked it to the ground. The Carrier provided a video showing the impact resulting in the light falling to the ground.

When Claimant reported the damage to the dispatcher, he did not confess to the incident, but left the impression that the signal light was already on the ground when he arrived. When Roadmaster A. Sintas asked Claimant about the incident, Claimant falsely stated that he had not caused the damage. Claimant later called Sintas and admitted to the damage. In the Carrier's view, these two offenses, neglect resulting in damage and then giving false information about it, combined to more than justify the suspension Claimant received.

ORGANIZATION POSITION:

The organization points out that Claimant did in fact take full responsibility for the incident and cleared up any dishonesty during the case processing. It points out the Carrier added on the allegation of dishonesty in order to try and issue the most heavy-handed discipline it could muster. In its assessment, everything about the case smacks of unfairness.

DECISION:

Claimant did eventually admit to the damage to the signal light; it is clear that he failed to be alert and attentive when backing up his grapple truck. The violation of MWSR 12.1.1 is established.

As to the allegation of dishonesty, it is established that Claimant did initially give Roadmaster Sintas false information, then later brought forth the truth. The Carrier was within its rights to consider Claimant's false information as an aggravating circumstance when assessing a penalty. The fact that Claimant later corrected his malfeasance by telling the truth diminishes the gravity of the dishonesty allegation. Nonetheless, the facts of the case, together with aggravating circumstances, constitute adequate evidence in support of the Carrier's discipline in this case.

AWARD:

The claim is denied.

Dated: November 25, 2020



Patricia T. Bittel, Neutral Member

Zachary C. Voegel

Zachary Voegel, Labor Member

A handwritten signature in blue ink that reads "Samantha Rogers". The signature is fluid and cursive, with the first name "Samantha" and last name "Rogers" clearly distinguishable.

Samantha Rogers, Carrier Member