

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 33

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-12-0529  
Organization File. 1732-13C2-1267

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing September 19, 2012, when Claimant, Mark Karagias (0127795), was disciplined with a Level S Combined 30-day Record Suspension which included 28-day Actual Suspension and a 2-day Record Suspension with a 3 year review period for his alleged failure to safely operate grapple truck which resulted in electrical pole being broken into two pieces and power lines being ripped down on September 19, 2012. The Carrier alleged violation of MOWOR 1.1 Safety, MOWOR 1.1.1 Maintaining a Safe Course, MOWOR 1.1.2 Alert and Attentive, MOWOR 1.6 Conduct and MOWSR 12.8.1 Backing Vehicle.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated with seniority, vacation, all rights unimpaired and pay for all wage loss commencing September 19, 2012, and continuing forward and/or otherwise made whole.

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The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7590 has jurisdiction over the parties and the dispute involved herein.

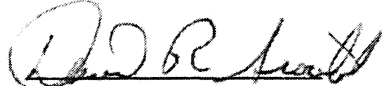
The Organization asserts a number of procedural errors in the instant claim including removing Claimant from service pending investigation. On the merits, the Organization asserts that Claimant inspected the right of way before operating his grapple truck. However, the two feet of vegetation obscured the ground wire for the electrical pole. Further, the discipline was excessive.

The Carrier asserts that there is substantial evidence of the cited infractions. Claimant did not operate the grapple truck in accordance with the Rules and pulled down a pole and power line when his outrigger caught a ground wire.


The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

A review of the instant evidence shows that there were no procedural defects that void the discipline. Claimant was placed on notice of the incident under investigation and the cited Rules at issue. On the merits, the evidence established that Claimant was operating his truck in the area of an electrical pole. He caught a ground wire and snapped a pole and pulled down the line. These facts establish the evidence for the cited Rule violations. Further, an examination of the record indicates no abuse of discretion is assessing the instant discipline.

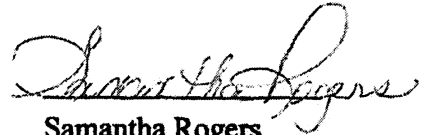
Claim denied.



Dave Scoville  
Organization Member



Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on SEPTEMBER 22, 2015