

BEFORE PUBLIC LAW BOARD NO. 7590

CASE NO. 61

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V

BNSF RAILWAY

(Former ATSF Railway)

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BNSF FILE NO. 14-16-0373

BMWED FILE NO. 493-SL13S1-1639

Claimant: J Beauchamp

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STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"We present the following claim on behalf of Southeast District 900 Andrew Beauchamp (7453731) Seniority Date July 07, 1995 for removal of Level S 30 Day Record Suspension and 3 Year Review Period. The suspension shall be set aside and the claimant shall be made whole for all financial and benefit losses as a result of violation. Any benefits lost, including vacation and health insurance benefits (including coverage under the railroad industry National Plan), shall be restored commencing May 26, 2016, continuing forward and/or otherwise made whole. Restitution for financial losses as a result of violation shall include compensation for: 1.) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the claimant while wrongfully suspended); 2.) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service. 3.) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time the claimant was suspended, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been removed from service; 4.) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service commencing April 13, 2016, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records

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**Findings:**

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. Parties to said dispute were given due notice of hearing thereon.

Claimant was notified in a letter dated June 1, 2016:

An investigation has been scheduled at 1000 hours, Friday, June 10, 2016, at the BNSF Conference, Room 305, Bldg 12, 1625 N. Lexington Avenue, Springfield, MO, 65802, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to wear a seat belt while operating a BNSF Company vehicle May 26, 2016, per DriveCam Event FBX48511. The date BNSF received first knowledge of this alleged violation is May 27, 2016.

This investigation will determine possible violation of MWSR 12.5 Seat Belts and MWSR 14.1.2 Seat Belts.

On August 14, 2016, the following letter was sent to Claimant:

An investigation was held following a postponement. Claimant was notified in a letter dated August 14, 2016:

As a result of investigation held on Wednesday, July 6, 2016 at 1100 hours at BNSF Conference, Room 305, Bldg 12, 1625 N. Lexington Avenue, Springfield, MO, 65802 you are hereby assessed a Level S 30 Day Record Suspension for your failure to wear a seat belt while operating a BNSF Company vehicle May 26, 2016, per DriveCam Event FBX48511.

In addition, you are being assessed a Three (3) Year Review Period that commences on August 4, 2016. Any rules violation during this review period could result in further disciplinary action.

It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWSR 12.5 Seat Belts and MWSR 14.1.2 Seat Belts.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

The Carrier argues that there are no procedural defects in the instant matter. Claimant can clearly be seen on the DriveCam without his seat belt.

The Organization counters that there was no offer of leniency for Claimant's infraction. Therefore, the discipline was excessive. Claimant admitted the infraction and should have received leniency and not a Level S.

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.

The Board has reviewed the evidence. There are no procedural violations which void the discipline. On the merits we find that there is substantial evidence in the record to support the discipline. Claimant can be seen without a seatbelt on the DriveCam and admitted to the infraction. A seat belt violation is considered a serious safety violation and a Level S is not an abuse of Carrier discretion.

**Award:**

Claim denied

A handwritten signature in blue ink, appearing to read "J.R. Pelt", written over a horizontal line.

Organization Member

A handwritten signature in blue ink, appearing to read "Brian Clauss", written over a horizontal line.

Brian Clauss  
Neutral Member

A handwritten signature in blue ink, appearing to read "Dana H. Rogers", written over a horizontal line.

Carrier Member