

**PUBLIC LAW BOARD NO. 7599**

AWARD NO. 139

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES )  
DIVISION - IBT RAIL CONFERENCE )  
)

) EX PARTE, CASE 139  
)  
)  
)

GRAND TRUNK WESTERN RAILROAD COMPANY )

ARBITRATOR: Gerald E. Wallin

DECISION: Claim sustained

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

1. The Carrier discipline (dismissal) imposed upon Mr. Chrivia, by letter dated May 26, 2023, in connection with allegations that he displayed gross carelessness and willful neglect in regards to Company Safety policies and procedure which led to colliding with a Brandt truck in violation of USOR General Rules C: Alert and Attentive; USOR General Rule H: Furnishing Information and Conduct; OTS Rule 906: Copying Mandatory Directives; and OTS Rule 902: Approaching Railroad Crossings, Moveable Bridges and Power Switching was arbitrary, disparate and excessive; imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File Chrivia5848PG060523/GTW-BMWED-2023-00014 GTW).
2. As a consequence of the violation referred to in Part 1 above, Claimant P. Chrivia shall now be compensated for all lost time, restored to service with all rights and benefits unimpaired and provided the remedy prescribed within Rule 25 of the Agreement."

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

According to the record, Claimant was high-railing on April 17, 2023 providing protection to a Brandt truck moving ahead of his vehicle. The Brandt truck had a consist of three cars loaded with turnouts from South Bend yard to control point Wellsboro and then to continue to Cassopolis. The two vehicles came to some nine road crossings. Because the Brandt truck and its consist would shunt the track at these crossings, the crossing guard gates were down at all of them.

Eventually, Claimant radioed the Brandt truck to stop, which it did. Although slowing, Claimant's vehicle collided with the last car of the consist. There were no injuries and no damage to the equipment, although the Carrier alleged that Claimant was traveling in excess of 20 miles per hour at the time of the collision.

According to the Carrier's witness, this type of incident produces discipline no greater than Level 2S. Nonetheless, Carrier imposed dismissal alleging Level 4S was appropriate. The Carrier's discipline policy was not part of the record.

The record contains (Exhibit 10) several pages of aerial color photographs from the GPS system in Claimant's vehicle. The information depicted is difficult to read. In addition, they contain the name of David Chaney. Chaney had not worked for the Carrier for some time. The GPS system had not been updated to remove the references to him. There is no evidence that the GPS system had been calibrated or checked for accuracy.


One of the rules for which Claimant was found guilty is OTS Rule 906: Copying Mandatory Directives. Claimant contends he was not copying anything at the time of the collision.

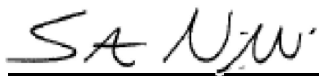
The Organization sent Carrier a certified letter dated May 2, 2023. This was two weeks prior to the postponed hearing on May 18<sup>th</sup>. The letter requested statements and any documents prior to the hearing that the Carrier planned to introduce at the hearing. The Carrier did not object to the Organization's letter. Nonetheless, the record does not show the Carrier complied with the request. The documents in question were introduced for the first time at the hearing. From the record, it appears that the Carrier effectively ignored the Organization's requests.

Under the circumstances, we find the Carrier denied the Claimant a fair and impartial investigation. He was an employee with 12 years of service with no prior discipline. Given the Carrier's failure to provide a fair and impartial investigation before assessing discipline, we must sustain the claim.

AWARD: The Claim is sustained. The Carrier is directed to comply with this Award within thirty (30) days of the date shown below.

  
Gerald E. Wallin, Chairman  
and Neutral Member

  
John Schlismann  
Organization Member

 **DISSENTING**  
Steve Napierkowski  
Carrier Member

DATED: JANUARY 10, 2025