

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 111

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION**

vs.

BNSF RAILWAY COMPANY

NMB Case No. 111

Award No. 111

Organization No. C-23-D040-4

Carrier No. 10-23-0065

STATEMENT OF CLAIM

The organization objects to BNSF's decision to impose a 30-day record suspension with a 12-month review period commencing January 6, 2023, on Claimant Jacob Benner ("Claimant") for being in violation of Maintenance of Way Operating Rule (MWOR) 1.2.5 (Safety Rules, Mandates, Instructions, Training Practices and Policies) and MWOR 1.3.1 (Rules, Regulations and Instructions and the Corporate Company Vehicle Operation and Maintenance Rule IV: Commuting) for misuse of a company vehicle when he utilized it for personal reasons between the dates of April 20, 2022 and May 25, 2022. The Organization contends that Claimant was not given a fair and impartial hearing because the Carrier conducted three (3) investigations on the same day regarding the same incident reflecting a "piling on" of the discipline. As a result, the Organization requests Claimant be immediately reinstated in accordance with Rule 40. The Organization also contends that the discipline issued was excessive and arbitrary.

FINDINGS AND OPINION

The Board 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' PLB Agreement and that the Board has jurisdiction over the dispute.

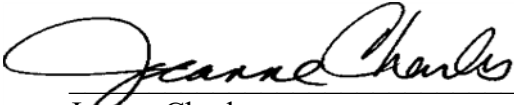
In reaching its decision, the Board has considered all the testimony, documentary evidence and arguments of the parties, whether specifically addressed herein or not. A careful review of the record convinces the Board that there is not substantial evidence in the record to uphold the Carrier's determination regarding Claimant. While it was established that Claimant violated the cited rules, the discipline was inconsistent with the Carrier's Policy for Employee Performance Accountability ("PEPA").

Claimant's discipline was assessed as a Serious Violation (Level S) which the Carrier contends was leniency for Claimant's offense of a fraudulent act which is a stand-alone dismissible violation. However, Claimant was not charged with fraud but with misuse of a company vehicle. As such, his discipline should have been assessed as a Standard Violation. Under that level of discipline, an employee is assessed a formal reprimand with a review period of 12 months. That aside, there is another complication at issue here. In another disciplinary action addressed in Award 112 on this Board, the Carrier levied additional charges in connection


with the same dates Claimant used the company vehicle for personal use. In Award 112, Claimant was also charged with speeding in excess of 10 MPH over the posted speed restriction with maximum speeds reached of 96 MPH, 93 MPH, and 86 MPH on three (3) different days that were inclusive of the days he was using the vehicle without proper authorization. Because an employee cannot be disciplined twice for misconduct arising out of the same event, the instant discipline must be rescinded as it would amount to industrial double-jeopardy. The penalty is properly addressed in Award 112. Accordingly, the discipline assessed by the Carrier in the instant claim was arbitrary and excessive under the facts and circumstances of this case. The 30-day suspension shall be rescinded.

AWARD

Claim sustained, in accordance with the findings above. The Carrier is to comply with the award on or before thirty (30) days following the date the award is adopted.



Jeanne Charles
Chairman and Neutral Member



Carrier Member 3/3/2025
Dated



Labor Member 3-3-25
Dated