

**BEFORE PUBLIC LAW BOARD NO. 7602**

**CASE NO. 112**

**BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYES DIVISION**

**vs.**

**BNSF RAILWAY COMPANY**

**NMB Case No. 112**

**Award No. 112**

**Organization No. C-23-D070-1**

**Carrier No. 10-23-0068**

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**STATEMENT OF CLAIM**

The Organization objects to BNSF's decision dated January 13, 2023, to dismiss Claimant Jacob Benner ("Claimant") for unsafe operation of a company vehicle which was in violation of Maintenance of Way Safety Rule (MWOR) 12.1 (Operation of Motor Vehicles) 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 and sidestepping the progressive discipline policy. 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. The evidence established that he was found 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. While the Carrier was proper in holding Claimant accountable for his egregious violations with regard to operating the company vehicle, the Board disagrees that the penalty was not arbitrary or excessive.


At the outset, this case raises some procedural concerns as argued by the Organization. In Award 111 of this Board, the Carrier had imposed a 30-day suspension with a 12-month review period for Claimant's unauthorized use of a company vehicle. While driving on these unauthorized dates, Claimant also engaged in the speeding at issue in this claim for which he was dismissed. The dismissal was effectuated one (1) week after the imposition of the 30-day


suspension referenced in Award 111 covering misconduct taking place during the same period of time in this claim. According to its declination letter, “because this was the Claimant’s second Level S violation within his review period, he was ultimately dismissed under PEPA, section IV, C, 2, b.” which states, that “if an employee commits an additional Serious Violation within the Review Period, he or she may be subject to dismissal.”<sup>1</sup> Hence, the dismissal was premised on the fact that Claimant had received a prior discipline and violated the speed limits while under the review period. However, this was an improper analysis.

Because the investigations and resulting discipline concerned the same period of time and conduct arising out of the same events, it was improper to levy discipline twice. This is the epitome of industrial double-jeopardy. The Carrier was well within its right to impose the maximum discipline level appropriate considering the totality of the circumstances (misuse of a vehicle and speeding). While the Carrier could have assessed a Stand-Alone Dismissal for reckless indifference to personal safety or safety of others or the public under PEPA section IV. D. 1. f., it did not. It assessed the offense as a Serious Violation (Level S). Because Claimant was not under a review period at the time of the speeding offense, the Carrier is left with the penalty of a 30-day suspension and a 36-month review period in accordance with PEPA. Accordingly, the dismissal shall be overturned with time served. While the dismissal is overturned due to the Carrier's improper application of its own policy of progressive discipline, Claimant shall not be awarded back pay. His conduct was unsafe and egregious. He should not receive a windfall due to the time it has taken to obtain final resolution of this matter.

### **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

  
3/3/2025  
Carrier Member      Dated

  
3-3-25  
Labor Member      Dated

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<sup>1</sup> Submission at 64.