

**PUBLIC LAW BOARD NO. 7602**

**Parties to the Dispute:**

<b>BROTHERHOOD OF MAINTENANCE OF WAY</b>	)
<b>EMPLOYES DIVISION—IBT</b>	)
	)
<b>v.</b>	)
	)
<b>BNSF RAILWAY COMPANY</b>	)

**Carrier File No. 10-14-0066**  
**Organization File No. C-14-D040-4**

**Claimant — Matthew Ivie**

**STATEMENT OF CLAIM:**

**Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement on January 8, 2014, when it issued a Level S 30 Day Record Suspension to Claimant, Matthew Ivie for violation of MWSR 12.5 Seat Belts and MWSR 14.1.2 Seat Belts, in connection with Claimant's failure to wear seatbelt while operating BNSF 26553, as evidenced by on board video on December 7, 2013, at approximately 0528 Hours, at or near MP 72.1 on the Ravenna Subdivision.**
- 2. As a consequence of the violation referred to in part (1), Claimant's record should be cleared of the discipline and any mention of the investigation and shall be made whole for any losses.**

**BACKGROUND:**

**The Claimant entered service with the Carrier on March 6, 2006.**

**The facts of what occurred are not in serious dispute. In December 2013, the Claimant had been working as a Relief Track Inspector on the Ravenna line for about six months. As a Relief Inspector, during the daytime, he is responsible for inspecting approximately 100 miles of track weekly, and at night he is subject to being called out**

to work on various track emergencies. At about 2:30 a.m. on December 7, 2013, the Claimant received a telephone call from the Maintenance Desk alerting him to two signal indications that there were track problems that needed immediate attention, one at MP 48.3 and the other at MP 72.1, between Hampton and Aurora. Because there is only a single track at MP 72.1 and a double track at MP 48.3, he elected to go first to MP 72.1. He arrived at MP 72.1 at about 3:20 a.m. and found a broken rail. It was supported by a tie, so trains could travel over it, very slowly, if properly guided. Claimant called the Dispatcher to notify him what the problem and to ask him to put a temporary 10 mph speed restriction on any trains coming through. He then contacted the section for them to send out a repair crew.

The Claimant then parked his truck on the right of way next to the track and aimed the spotlight mounted on it to illuminate the break. Over the next two hours, he walked four trains over the broken rail:

When a train was on approach, they would call me and I would give them instructions not to exceed 10 mph. I've got the broken rail illuminated with my spotlight. I'd let them know if any problems arose at the time of their passing over, like if it broke open further.... I'd get them to stop ... and then I would let them know when they were clear of the broken rail to resume normal track speed. And after each train went by, I got out and did a visual inspection of the break to make sure no other cracks were forming, that it hadn't spread apart any further. To make sure I was still able to walk another train over it.

It was a cold evening—the temperature, Claimant estimated, was in the single digits—so he got in and out of the truck repeatedly, waiting in the heated cab until another train arrived. At about 5:30 a.m., a section truck arrived to start the repair. Claimant's truck was where the repair truck needed to be, so he got in the cab and, as he put it, “rolled” his truck forward to get out of the repair crew's way. His truck's internal DriveCam was activated when he moved the truck, presumably due to some significant jostling motion—the DriveCams are set to be activated by unusual acceleration or braking and by traveling over rough terrain.

A review of the DriveCam showed that the Claimant was not wearing his seat belt when he moved his truck out of the way of the section repair truck, and he has acknowledged that he was not wearing it: “The section truck arrived on scene and I was basically right where they needed to be in order for their boom to reach everywhere they needed, so I proceeded to roll forward... I rolled, I was creeping.... I just pulled forward remaining on the right of way, so they could fit in behind me.” The

evidence established that Claimant was driving 4 mph or less when he moved his truck. Mr. Ivie testified that forgetting to fasten the seat belt when he went to move his truck out of the way was inadvertent: "I was ready to get traffic flowing, I pulled out of their way and it just, it slipped my mind. I was just ready to get out of their way so we could get moving on the broken rail and because I still had another one to go look at and I got a call about a third one, that same night also."

The Carrier sent Claimant a Notice of Investigation dated December 10, 2013, indicating that an investigation would be held "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to wear seatbelt while operating BNSF 26553, as evidenced by on board video on December 7, 2013, at approximately 0528 hours, at or near MP 72.1 on the Ravenna Subdivision. The date BNSF received first knowledge of this alleged violation is December 9, 2013." The hearing took place December 21, 2013. George Biro, Assistant Roadmaster, Lincoln, Nebraska, testified regarding the DriveCam footage and how the on board video system works, and the Claimant testified as set forth above.

By letter dated January 8, 2014, Claimant was notified that he had been found in violation of MWSR 12.5, Seat Belts, and MWSR 14.1.2, Seat Belts. The discipline assessed was a Level S 30 Day Record Suspension and a one-year review period. The Organization filed a timely appeal. The parties having been unable to resolve the matter through the grievance process submitted it to the Board for a final and binding decision.

#### **FINDINGS AND OPINION:**

Public Law Board 7602, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein.

The Claimant was found to have violated MWSR 12.5 and MWSR 14.1.2. MWSR 12.5, Seat Belts, reads:

**Wear seat belts while operating or riding in equipment or vehicles that are equipped with them.**

**Exception: Seat belts are not required when employees are operating vehicles while performing train inspections or coupling air hoses. When operating the vehicle in travel to and from such work activities, seat belts must be worn.**

**MWSR 14.1.2, Seat Belts, states:**

**Wear seatbelts while operating or riding in equipment or vehicles that are equipped with them. Seatbelts may be removed when:**

- **The field of view is obstructed and it is necessary to stand in order to obtain a clear view of the surroundings, or**
- **Employees are operating cranes that require being seated in the upper rotating structure (e.g., Locomotive Cranes; Truck Cranes; Rail Bound Track Cranes, etc.)**

**The evidence from the DriveCam establishes that Claimant was not wearing his seat belt, and the Claimant has candidly acknowledged that he was not. Claimant's technical violations of MWSR 12.5 and MWSR 14.1.2 are thus established. Safety rules are among the most important to be enforced, and the Board does not take such cases lightly. However, the circumstances of this case operate to mitigate the seriousness of Claimant's infraction and demonstrate the importance of evaluating employee conduct in context.**

**The Claimant was admittedly not wearing his seat belt when he moved his truck up to make room for the section repair truck, and there is no dispute that wearing seat belts is critically important to driver safety when operating motor vehicles. At the same time, Claimant's maneuver was akin to moving a car in one's driveway to make room for another one—something that people often do without stopping to put on a seat belt. The Claimant's truck was not on a public highway or paved road; it was on the railroad right of way, which arguably is not a road at all. He was not driving in traffic, nor was he driving at any speed. All he did was move the truck forward enough to make room for the repair truck; while the record does not establish exactly how far he moved the truck, it could not have been far at all, if only because he had to get out and walk back to discuss the necessary repairs with the section crew. The Claimant had been awakened in the middle of the night and had been up and working for at least three hours in freezing conditions outside, with additional work ahead of him on two other track emergencies.**

**The Carrier is right to be concerned about employee safety and to enforce reasonable rules it has enacted to ensure that safety. At the same time, one of the fundamental principles of industrial justice is that the penalty should be commensurate with the infraction. Assessing a Level S 30 Day Suspension under the facts of this case was grossly disproportionate to the severity of Claimant's infraction of Carrier rules. The facts of the case remove it from the "Serious" category. Instead,**

Claimant's failure to wear his seat belt while moving his truck should have been treated as a first Standard Violation under the PEPA—a formal reprimand with a twelve-month review period. The Level S Record Suspension on his record shall be removed and replaced with a formal reprimand and a one-year review period pursuant to the progression set forth in the PEPA.

**AWARD**

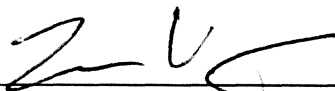
Claim sustained in accordance with the findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made in accordance with the findings of the Board. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

  
Andria S. Knapp, Neutral Member

  
Nathan Moayyad, Carrier Member

  
Zachary Voegel, Organization Member

8/17/16  
Date