Award No. 45
Case No. 45
NMB Case No. PLB-07602-000045

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:
BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
)
v.)
)
BNSF RAILWAY COMPANY)

Carrier File No. 10-14-0400
Organization File No. C-14-D040-32

Claimant — John W. Robison

BACKGROUND:

This Claim challenges the Carrier's imposition on the Claimant of a Level S 30 Day Record Suspension with a one year review period for failing to wear a seat belt while operating Carrier equipment. The Claimant entered service with the Carrier on March 20, 2006.

The basic facts of what happened are not in dispute. On June 24, 2014, the Claimant was working as a Machine Operator on Gang RP10, which was working in and around MP 272.6 on the Cherokee Subdivision. At some point early in the day, the Gate Spiker that the Claimant was operating broke down when a gauging wheel fell off. Although it did not take long to repair the wheel, by the time the machine was ready to be returned to service, the gang had moved ahead. The Claimant testified at the investigatory hearing that he felt pressured to get back into the field to make up the lost time, and when he entered the cab to get back to work, he simply forgot to fasten his seat belt. Division Engineer Watkins was present at the work site that day, and approached the Claimant as he was working to give him a tape measure. Watkins noticed that Claimant was not wearing a seat belt but did not say anything to him. Watkins contacted the Production Assistant Roadmaster for the gang, Michael Buchholz, told him that it appeared that the Claimant was not wearing a seat belt, and

asked him to return to the Gang Spiker with him. When they got there, the two men confirmed that Claimant was not wearing a seat belt. In the interim, he had spiked some five to seven ties. Watkins and Buchholz left without saying anything; the Claimant continued to work, spiking "a few more ties" before they returned a short time later, charged him with failing to wear a seat belt, and relieved him of his duties for the day. The Claimant had still not fastened his seat belt.

The Carrier issued a notice of investigation by letter dated June 27, 2014, "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 equipment on June 24, 2014 at approximately 0950 hours ..." Following a mutually agreed postponement, the investigatory hearing was held July 8, 2014. The Organization asked Mr. Buchholz why the Carrier's "Approaching Others" program was not used to remind the Claimant of his obligation to wear a seat belt in lieu of formally disciplining him. Buchholz testified that by the time he got involved it was "too late"—the Claimant was already violating the rule and "we have a duty as supervisors to enforce the rule."

By letter dated August 1, 2014, the Carrier found the Claimant had violated MWSR 1.4.9, Seat Belts, and issued him a Level S 30 Day Record Suspension with a one-year review period. The Organization filed an appeal, and the parties having failed to resolve the matter mutually, it has been appealed to the Board for decision.

The Carrier contends that the Claimant admitted that he was not wearing a seat belt when he was observed by Watkins and Buchholz, so the violation was established. Failing to wear a seat belt is a serious safety violation, and the standard discipline is a Level S 30 Day Record Suspension and a review period. The Carrier treated the Claimant the same as any other employee who is found not wearing a seat belt and there is no basis to reverse the discipline. In response, the Organization argues that the Claimant was set up and ambushed for when he simply forgot to fasten his seat belt in his hurry to return to work. The Carrier has touted its "Approaching Others" program, but instead of using it, supervisors impose harsh and excessive discipline on employees who are only trying to do a good job. Throwing the book at employees for minor infractions is no way to foster productive labor-management relations. Discipline under PEPA is for employees who show a "marked disregard" for the Carrier's rules, and this is not such a case. If operating a gate spiker without a seat

belt is such an unsafe practice, Watkins and Buchholz should not have left the Claimant to continue to work unprotected. Instead they made three trips to his equipment before taking action. This is the Claimant's first discipline in over eight years with the Carrier. The Carrier's "gotcha games" cannot be tolerated and the discipline should be reversed.

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 1.4.9, which states: "Wear seat belts while operating or riding in equipment or vehicles that are equipped with them." The safety benefits of wearing seat belts are so well-known that they need no further explication by the Board, and prior Board decisions have recognized the Carrier's right to treat employees' failure to buckle up as serious safety violations, warranting discipline under PEPA at Level S (Serious).

The Claimant candidly acknowledged that he forgot to fasten his seat belt in his hurry to get back to work after the Gang Spiker was repaired. Anyone who has ever dashed into their car late for an appointment and driven off without first fastening their seat belt can understand how that might happen. That does not make the failure to wear the seat belt any less dangerous, however. Moreover, in this case, Watkins initially observed the Claimant not wearing his seat belt but did not say anything. When he and Buchholz returned some minutes later, the Claimant was still not wearing a seat belt. They left and returned again still later, and the Claimant was *still* not wearing a seat belt. At some point, what started as an accidental oversight becomes a rules violation. The Claimant's forgetting to fasten his seat belt when he first got back into the Gang Spiker was understandable. But he continued to work without it long enough for Watkins and Buchholz to come and go three times before taking action. Had Claimant remembered to fasten his seat belt after Watkins' initial visit or Watkins' and Buchholz' first visit together, they might have let the matter go. When his supervisors observed him continuing to work without a seat belt over a period of time, however, it was not inappropriate for them to take action. Failing to wear a seat

belt *is* a serious safety violation. The Carrier treats it as such, and the Board has upheld the Carrier's right to do so. The Claimant was treated the same as other employees who were discovered not to be wearing a seat belt when required to do so, and the Board finds no basis for disturbing the Carrier's decision in this case.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.

Andria S. Knapp

Andria S. Knapp, Neutral Member

Nathan Moayyad, Carrier Member

Zachary Voegel, Organization Member

3/15/17

Date