

BEFORE PUBLIC LAW BOARD NO. 7602

AWARD NO. 60

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

AND

BNSF RAILWAY

BNSF FILE NO. -10-15-0379

BMWED FILE NO. C-15-D040-30

Claimant: R. Younge

STATEMENT OF CLAIM

Appealing the discipline assessed to Mr. Richard Younge. The investigation held on July 1st, 2015 resulted in Mr. Younge receiving a Level S 30 Day Record Suspension with a (1) Year Review Period for violation of MWSR 14.1.2 Seat Belts

Findings:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7602 has jurisdiction over the parties and the dispute involved herein.

In the instant matter, Claimant received a letter dated June 11, 2015, advising him to appear at an investigation into an allegation that he was operating a spiker machine without wearing the required seatbelt. The alleged violation date was June 10, 2015.

Following postponement, a hearing was held. Claimant was notified in a letter dated July 31, 2015:

As a result of investigation held on Wednesday, July 1, 2015 at 1500 hours at BNSF Main Conference Room, 685 McClure Road, Aurora, IL, 60502 you are hereby assessed a Level S 30 Day Record Suspension for your failure to wear a seat belt while operating an automatic spiker machine number 440330 as observed/approached by BNSF Supervisors on June 10, 2015 at approximately 1430 hours near M P 34.3 on the Chicago Subdivision, working on gang TTPX0045. In addition, you are being assessed a One (1) Year Review Period that commences on July 31, 2015.

Any rules violation during this review period could result in further disciplinary action. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWSR 14.1.2 Seat Belts.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

The Carrier argues that the Rule is clear. Employees are required to wear a seat belt when operating Carrier equipment. The spiker machine that Claimant was operating is no exception. Claimant was aware of the Rule and violated it. Further, there was no abuse of discretion by the Carrier when the nature of the infraction is weighed against the discipline.

The Organization raises a procedural objection that it was in error to proceed with telephonic testimony, that the evidence was not substantial, and that the investigating official was not a signatory to the decision.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

This Board finds that there are no procedural violations which void the discipline. On the merits, the following section of the transcript must be considered:

MARISSA PROCTER: Do you an- understand Maintenance of Way Safety Rule S-14.1.2 Seatbelts?

RICHARD D YOUNGE: Yes.

MARISSA PROCTER: Mr. Younge, can you explain what this rule means for the record?

RICHARD D YOUNGE: It means you have to wear a seatbelt while operating or riding on equipment.

MARISSA PROCTER: Mr. Younge, at the time the test team walked up to you, were you wearing your seatbelt?

RICHARD D YOUNGE: No.

MARISSA PROCTER: Mr. Younge, was there any particular reason stated in the rules that would be allowable for you not to be wearing your seatbelt?

RICHARD D YOUNGE: No.

MARISSA PROCTER: Mr. Younge, have you heard evidence and testimony, I'm sorry. Mr. Younge, you have heard evidence and testimony. Can you tell me in your words what occurred regarding this alleged in- event?

RICHARD D YOUNGE: I was operating the machine, and I moved it and that's when they come up and approached me that I was not wearing my seatbelt.

* * *

GEORGE LOVELAND: So, when you didn't fu- excuse my language, I didn't mean. When you didn't fasten your seatbelt, it wasn't, you didn't se- you didn't tell yourself, "Screw it. I know the audit team is here. I am not wearing my seatbelt."

RICHARD D YOUNGE: No, I did not.

GEORGE LOVELAND: So, it wasn't a marked disregard for the rules, it was just that you forgot.

RICHARD D YOUNGE: I, it was not a marked disregard. I had just forgot.

The evidence shows that Claimant was aware of the Rule regarding seatbelt usage and forgot to fasten his seatbelt. His admission indicates that he committed the infraction. It was not an abuse of discretion for the Carrier to impose the instant discipline.

Award:

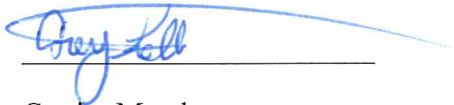
Claim denied.

Order:

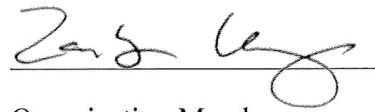
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.



Neutral Member



Carrier Member



Organization Member

June 14, 2018