

PUBLIC LAW BOARD NO. 7766

Brotherhood of Maintenance  
of Way Employes Division - IBT Rail Conference

and

New Orleans Public Belt Railroad

Award No. 16

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s dismissal of Mr. T. Johnson, by letter dated March 27, 2020, for alleged violation of GR-4 of the NOPB’s Safety and Operating Rulebook, NOPB’s Engineering Manual Rule 72.11 Hi-Rail Inspection Vehicles, Track Machines and Hi-Rail Trailers Used to Transport Men and/or Equipment was unwarranted, arbitrary and in violation of the Agreement (System File NOPB506JF20 NOP).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Johnson’s charges and imposed discipline must be overturned and removed from his personal record and he is to be compensated for any and all lost time at his respective straight time rate of pay and any and all overtime at his respective overtime rate of pay and any and all holidays had he not been unjustly charged and dismissed without sufficient evidence. Also, to include credit for all lost time to be afforded to railroad retirement, vacation, hospitalization, to include doctors, hospitals, doctors’ office visits, dental, vision, prescriptions and all seniority unimpaired. Further, all expenses the Claimant may have acquired to include meals, lodging and mileage at the negotiated rate of fifty-seven and one-half cents (\$.57.5) a mile for attending the formal investigation on March 11, 2020 from the Claimant’s place of residence to the Carrier’s Administration Building and return to the Claimant’s place of residence.”

FINDINGS

Public Law Board No. 7766, upon the whole record and all the evidence, finds the parties involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction of the dispute herein; the parties were given due notice of hearing before this Board and they participated therein.

The Claimant was disciplined pursuant to Notice of Investigation, Investigation held March 11, 2020, “to ascertain the facts and determine your responsibility, if any, in connection with your alleged damaged that you caused to New Orleans Public Belt Railroad property on February 21, 2020 at 0730 Hours at East Bridge CPL 903 (MP J3.1). The rule(s) violation that you are currently being investigated: GR-4 for failure to prevent causing damage to railroad equipment ... And ... Rule 72.11.1(2) for failure to abide by speed restrictions while driving a hi-rail truck over crossings and switches...”

In a discipline letter dated March 27, 2020, the Carrier found that “Based on the information provided during the formal investigation and after weighing the credibility of those who testified, [] there was relevant and sufficient evidence to support the conclusion that Mr. Johnson was guilty of violating the rules referenced above... Accordingly, [the Carrier] terminate[d] Mr. Johnson’s employment with the NOPB, effective immediately.”

The Organization appealed the discipline and the Carrier denied the appeals. The dispute was not resolved during a settlement conference and progressed to arbitration. This matter is now before the Board for final and binding resolution. The Board has carefully reviewed the entire record in this case, including the arguments and awards provided in support of the parties’ respective positions, whether or not specifically addressed herein.

The Board finds the Organization’s procedural objections unpersuasive under the facts and circumstances of this record.

There is substantial evidence in the record to uphold the Carrier’s determination of culpability. However, the mitigating factors proven by the Organization persuade the Board that dismissal is excessive under the unique facts and circumstances of this particular record. Claimant is reinstated to service with full seniority, but without back pay.

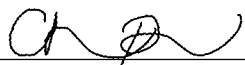
### AWARD

Claim sustained in accordance with the Findings. The Carrier is ordered to make the Award favorable to the Claimant effective on or before 30 days following the date below.



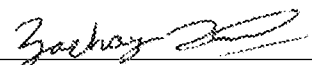
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Robert Grey  
Neutral Member



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Chloé Pedersen  
Carrier Member



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Zachary Wood  
Organization Member

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April 7, 2022  
Dated