

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NUMBER 7048

BNSF RAILWAY
(former ATSF property)

(Carrier)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

(Organization)

PLB No. 7048 Case 6

Carrier File No. 14-06-0280

Organization File No. 130-13S1-068

Claimant: Larry T. Webb

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on October 6, 2006 when Claimant, L.T. Webb, was issued a Level – S thirty (30) Day Record Suspension for an alleged violation of Maintenance of Way Operating Rules 1.1.2-Alert and Attentive, Rule 1.6-Conduct and Maintenance of Way Safety Rule S-12.1.1-Operation of Motor Vehicles when the claimant placed himself and others in peril when he ran a red light in a Carrier vehicle on August 16, 2006; and
2. As a consequence of the violation referred to in part 1 the Carrier shall reinstate all seniority, vacation, all rights unimpaired and pay for all wage loss commencing October 6, 2006, continuing forward and/or otherwise made whole.

This claim was discussed in conference between the parties.

NATURE OF THE CASE

The Claimant was issued a thirty-day suspension for passing through a red light on August 16, 2006 in Pampa, Texas. The document conveying the charge contends that the Claimant passed the red light located at the intersection of Route 60 and Price Road while driving a Carrier vehicle in a west bound direction at approximately 9:30 a.m. At the investigative hearing held in Pampa, Texas on September 1, 2006, the Claimant denied having run the red light in the west bound direction, but acknowledged having run a red light in an easterly direction on Price Road. The Claimant's admission was corroborated by the Carrier employee who observed the Claimant passing through the intersection, and thereafter reported the transgression to management. Thus, although the nature of the infraction was misstated in the charging document, the Claimant admits having engaged in virtually identical misconduct on the date in question.

The Claimant contends that the traffic signal was green when he entered a dip in the road and had turned red by the time he emerged from the dip in the road. However, the passenger in his vehicle testified at the investigative hearing that he observed the green light turning

yellow as they approached the traffic signal. This testimony implicates the Claimant for having failed to exercise due caution in operating a Carrier vehicle, as required by Rule 1.2-Alert and Attentive, Rule 1.6-Conduct in Maintenance of Way and Safety Rule S-12.1.1, Operation of Motor Vehicles.

Rule 1.1.2 provides, in relevant part, that: "Employees must be careful to prevent injuring themselves or others. They must be alert and attentive when performing their duties and plan their work to avoid injury." The Claimant's failure to observe the yellow traffic signal in time to bring his vehicle to a stop before the light turned red was reasonably construed by the Carrier as a violation of this rule. The record does not establish, however, that the Claimant was careless or negligent in violation of Rule 1.6, as there is no evidence that he was speeding or operating imprudently. He simply made a driving error. Thus, the alleged violation of Rule 1.6 cannot be sustained.

Fortunately, there was no accident or near miss, as the testimony established persuasively that no vehicles were moving in the vicinity of the intersection when the Claimant passed through the red light. The Claimant also violated Rule S-12.1.1, as the record established persuasively that the Claimant passed through a red traffic signal in violation of local traffic ordinances.

At issue in the instant case is not whether the Claimant committed an infraction for which discipline may be imposed, but whether the misstatement of the direction in which he was traveling in the charging document invalidates entirely the imposition of discipline, and whether the penalty of a thirty-day record suspension is appropriate for this infraction under the circumstances adduced by the testimony at the investigative hearing.

The Claimant testified that he could not stop his truck precipitously without applying his brakes so hard that he risked dislodging the 6000 pound steel rail he was carrying on top of his truck. The Claimant reasonably should have been aware of the nature of his cargo and should have driven his vehicle, even operating within the speed limit as he testified, so that he could maintain safe control at all times. His failure to stop for the traffic signal cannot be excused by his failure to maintain a prudent speed for the road conditions, forward visibility, his vehicle, and his cargo. The Claimant therefore failed to comply with the requirements of safe operation of a Carrier vehicle as established by

Rule 1.1.2.

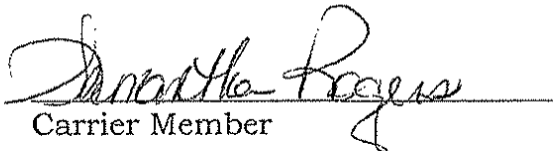
The misstatement of the direction in which he was traveling does not alter a material fact necessary to conclude that the Claimant failed to operate a vehicle properly within Carrier guidelines and applicable motor vehicle ordinances on August 16, 2006. However, the absence of proof that the Claimant was speeding or negligently inattentive to his driving conditions, combined with the fortuitous circumstance that no vehicle was moving toward the intersection, mandate a reduction in the penalty imposed from a thirty-day record suspension and three year review to a five-day suspension. The penalty imposed shall be reduced, and the Claimant's record revised accordingly.

We so find.


Daniel F. Brent, Impartial Chair

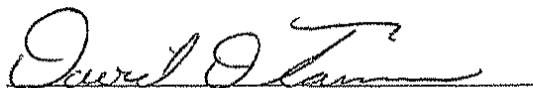
Dated: 9-29-08

() I concur. () I dissent.


Samantha Rogers
Carrier Member

Dated: 10/31/08

(4) I concur. () I dissent.


David D. Tamm
Organization Member

Dated: 10/13/08