

**PUBLIC LAW BOARD NO. 7585**

**Case No. 2/Award No. 2**  
**Carrier File No.: 10-11-0563**  
**Organization File No.: C-11-D040-34**  
**Claimant: B. Ralston**

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<b>BNSF RAILWAY COMPANY</b>	)
<b>(former Burlington Northern Railroad Company)</b>	)
	)
<b>-and-</b>	)
	)
<b>BROTHERHOOD OF MAINTENANCE</b>	)
<b>OF WAY EMPLOYES DIVISION - IBT</b>	)

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**FACTS:**

Bradley W. Ralston was hired by BNSF as a Trackman in 1994. At the time this case arose, he worked as a Machine Operator operating the tamper of the surface gang at Chillicothe sub. He was MWOR Requalified on July of 2011.

On August 9, 2011, he struck a vehicle with the BNX 5400398 tamper he was operating at a public crossing, causing damage to a car that crossed into his path. The Carrier found him to be in violation of Maintenance of Way Operating Rule 6.50.2: "On-track equipment must approach all grade crossings prepared to stop and must yield the right of way to vehicular traffic. If necessary flag the crossing to protect movement of on-track equipment. The use of horns at grade crossings by all roadway machines and hy-rail equipment is optional at the discretion of the operator." Claimant received a Level S Record Suspension of 30 days with a three year review period.

**CARRIER'S POSITION:**

The Conducting Officer was fair and impartial and Claimant did not suffer prejudice from any procedural lapses. Claimant admitted his view of the gates was obscured as he began to enter the crossing, yet he did so anyway, in violation of the rule.

**ORGANIZATION'S POSITION:**

Claimant should not be held responsible and doing so amounts to intimidation. It is the driver of the car who crossed in front of the equipment, even going so far as to speed up; she is the responsible party under Illinois law. The Conducting Officer was anything but impartial and tried to ignore important evidence. There was no rule violation.

## **DECISION:**

The Organization is correct that the car driver was unsafe under Illinois law by accelerating before the tracks were clear. However, the Carrier is not bound in terms of its disciplinary policy by Illinois law; it can hold its employees accountable for violation of the rules it establishes for safe operations even if a public driver acts irresponsibly. The sole question to be decided here is whether Claimant violated the Carrier's rules.

For an investigation to be thorough and impartial, both sides must be afforded the opportunity to present evidence in support of a wide range of arguments which can be subsequently evaluated. The Organization successfully entered its evidence into the record and as a result the case was not prejudiced by the handling of the investigation.

Unfortunately, hearsay is the best available evidence to help in reconstructing how the accident happened. Claimant's supervisor, Chester D. Schoonover, testified that he talked to the Foreman in the vicinity and learned there was almost no damage to the public driver's car. There was almost no damage to the tamper machine when Schoonover inspected it. Schoonover talked to the crew and learned that Claimant was traveling on one track while a freight train was going west on the opposite track. Claimant had been moving through town with the flashers and gates engaged and with the protection of the train next to him. When he approached Prairie Street, a car darted out into the crossing as the gates went up. According to Schoonover, "it [the car crossing] was reported before the flashers quit flashing," though he did not state the source of this report. He learned in an interview that the driver actually accelerated the car when she saw the tamper. A police officer on the scene confirmed the acceleration and stated the gates were up.

From this report, it can be seen that Claimant was using the train beside him to make sure the gates were down and traffic would not pull out in front of him. At some point the train obviously passed, and the tamper continued to move down the tracks without this protection. The statement of the police officer is not rebutted and indicates the gates were open when the car crossed the tracks.

From the description of the car, the second the gates went up, the driver assumed it was safe and darted across the tracks. This conduct, while unsafe under Illinois law, is nonetheless quite predictable in today's time-pressed world. Claimant knew that opening gates could mean on-coming drivers. Gates don't open until trains have fully passed unless malfunctioning, and there is no alleged malfunction here. Hence, the freight train had passed and cleared the area when the gates began to lift. During this time, Claimant would have had a clear view of the car. When asked, Claimant said "I did not see the gates" and denied seeing the public driver's vehicle. He said he was going between two and five miles an hour, honking his horn and his lights were on. He claimed he approached the crossing prepared to stop and yield the right of way, but when asked why he did not see the car, his response was "I don't know."

This evidence indicates Claimant was not prepared to stop; he was not paying enough attention to see the accident unfolding. The gate does not start lifting until a train has totally passed and cleared the intersection. It takes a few moments for the arms of the gate to fully rise. During this time, Claimant should have been paying attention to the intersection and the presence of any cars in it. Because he did not look and see the car in question, he was not actually prepared to stop and yield the right of way when he needed to. This constitutes a violation of MOWOR 6.50.2.

**AWARD:**

The claim is denied.

March 19, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member



D. J. Merrell, Carrier Member