

PUBLIC LAW BOARD NO. 7425

PARTIES) SMART - TRANSPORTATION DIVISION  
TO )  
DISPUTE) BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

**Claim of Birmingham, Alabama Switchman Keith A. Roberson for reinstatement to service with seniority rights unimpaired, removal of censure from his personal record and pay for all time lost including but not limited to the following: payment of vacation allowance, health and welfare costs, reimbursement of all expenses related to the pursuit of alternative employment, reimbursement for any damages incurred as the result of discharge from service including proceeds on any property, real estate or financial instruments sold to replace lost compensation, as a result of an investigation held on September 8, 2015. (Organization File No. D847-325-15A; Carrier File No. 55-16-0014D)**

FINDINGS:

**The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon. The Claimant was present for and provided opportunity to participate with the Organization's presentation of its case to the Board.**

**By letter of August 24, 2015 the Claimant was notified that an investigation was scheduled for September 2, 2015 for the purpose of ascertaining the facts and determining his responsibility, if any, in connection with his alleged fouling track/striking rail equipment while operating a utility vehicle that resulted in damage to the utility vehicle while he was attached to a yard job and protecting a shoving movement on BN Track 3903 in Birmingham Yard on August 21, 2015.**

**The investigation was rescheduled and held on September 8, 2015. The Claimant was present for and assisted in a defense against the charge by a representative of the Organization.**

**Following the investigation, by letter of September 21, 2015, the Carrier notified the Claimant that it determined him to be guilty as charged and that he was dismissed from service effective that same date. The letter said it found the Claimant to have been "in violation of TSR 1.6.2, Employees Fouling the Track (VIO: Violation of**

**Serious Safety Rules/Deadly Decisions) and TSR 12.0, Motor Vehicles and Trailers.” The letter also stated that in determining discipline, consideration was given to the Claimant’s record.**

**TSR 1.6.2 states:**

**Employees must always be alert and expect the movement of trains, engines, cars or other moveable equipment at any time, on any track and in either direction. Before fouling any track, employees have an individual responsibility to determine it is safe to do so. If the track is occupied by rail equipment, employees must ensure appropriate protection has been provided for the task to be performed.**

**TSR 12.0 states in part:**

**S-12.1 Operation of Motor Vehicles**

**S-12.1.1 General Requirements**

**Every company vehicle driver must**

- **Know and obey local, state and federal laws and regulations for operating vehicles both on and off company property.**
- **Comply with all rules and procedures listed in the BNSF Company Vehicle Policy and Procedures Manual for operating company or temporary replacement vehicles.**
- **\* \* \* \* \***
- **Promptly report traffic incidents, accidents, and vehicle damage, no matter how minor, to the proper manager.**

**S-12.1.2 Crossing Tracks**

**When crossing tracks with a motor vehicle or off-track equipment at non-public crossing locations:**

- 1. Approach as close to a right angle to the track as practical to allow for optimal viewing of potential approaching movements.**
- 2. Stop before crossing the track(s), unless the vehicle or off-track equipment is foul of a previously crossed track.**

3. Look for trains, engines, rail cars and on-track equipment movements approaching from either direction.
4. Yield to trains, engines, rail cars and on-track equipment before proceeding across the track(s).

#### Exceptions

- Stop is not required within mechanical servicing or repair buildings protected by Blue Signals when precautions have been taken to prevent on-track equipment movement in the building.
- Stop is not required within intermodal facilities unless designated by traffic signs (e.g., stop signs, roadway stop bars, track lights, track gates).

In pre-investigation of the incident the Claimant provided a hand-written statement dated August 21, 2015 that reads as follows:

I was crossing over BN2 on East End when the right rear wheel caught on the rail of BN2 pulling the front of the buggy I was driving into a car that was on BN3. The buggy's window frame made contact with the car on BN3.

It is the position of the Carrier that the record clearly supports a finding that the Claimant violated the above mentioned safety rules along with one of the Eight Deadly Decisions, i.e., fouling track unnecessarily or without proper protection, when the Claimant crossed over Track BN2 with the Kubota utility vehicle he was driving at a crossing at the east end of the yard and attempted to drive between Tracks BN2 and BN3. The Carrier says because there were cars on Track BN3, there was insufficient room for the utility vehicle to fit between the tracks and that with the Claimant continuing to move forward, fouling the tracks, this resulted in the driver's side of the vehicle colliding with a rail car on Track BN3, shattering the windshield of the vehicle and slightly damaging the rail car.

The Organization has advanced several procedural objections concerning the conduct of the investigation, challenges that the Board in study of the record does not find to be of sufficient substance or support of record to hold that the Claimant had been denied benefit of a fair and impartial hearing.

In defense of the Claimant on the merits of the dispute, the Organization says the crossing at issue used by the Claimant is unusual in that it is located on the other side of the fouling point; the unique positioning of rail cars on the wrong side of the fouling point made it very difficult for the Claimant to safely utilize the crossing; an

experienced employee, the Claimant believed that enough clearance existed in order to execute the maneuver; in completing the turn to enter the space between Track BN2 and BN3, the right rear wheel of the vehicle inadvertently contacted the south rail of Track BN2; contact with the rail altered the course of the vehicle by shifting it into the rail car on Track BN3; and, it was an unfortunate and unintentional accident that resulted in damage to the windshield of the vehicle; not a circumvention of the rules.

The Organization also challenges the Carrier contentions that there was insufficient room for the utility vehicle to fit between the tracks. In this respect, it says the Carrier assertion was not supported by any factual evidence, which it says could have consisted of either direct measurements or more detailed photographs.

There is no question that the Claimant was responsible for the accident; the record supporting a finding that the Claimant was aware that rail equipment was fouling the track and the option existed to have driven between Tracks BN1 and BN2 or to have walked the track to perform his car coupling duties. It is also without question in view of the Claimant's past record that he was subject to stern discipline. However, the Board finds discipline should be short of the ultimate penalty of dismissal from service. We believe more appropriate discipline to be a suspension from service to the date of implementation of the Board's award, without pay for all time lost. Accordingly, the Board will direct that the Claimant be so returned to service, with seniority and benefits unimpaired, and subject to successfully passing all regularly required return to service examinations.

**Award:**

**Claim disposed of as set forth in the above Findings.**



**Robert E. Peterson**  
Chair & Neutral Member



**Melissa A. Beasley-Coke**  
Carrier Member



**J. Michael LaPresta**  
Organization Member

Fort Worth, TX

Dated: March 1, 2018