

**PUBLIC LAW BOARD NO. 7833**

**SMART - TRANSPORTATION DIVISION \***

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**CASE NO. 1**

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**AWARD NO. 1**

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**and**

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**BNSF RAILWAY COMPANY \***

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**STATEMENT OF CLAIM:**

Claim for the denial of the discipline claim of Missouri Seniority District (Beardstown) Brakeman K. Krisher and our request for removal of censure from his personal record and pay for all lost time (30-day record suspension) as a result of an investigation on December 11, 2013.

**FINDINGS**

Claimant K. Krisher was charged with failure to stop the train he was operating and side swiping another train on October 30, 2013. As a result of the investigation, the Carrier notified the Claimant that he had some responsibility for the incident. On December 23, 2013, the Claimant was assessed a 30-day record suspension plus a 36-month review period. The Organization filed a claim on behalf of the Claimant on April 4, 2014. The Carrier denied the claim on April 25, 2014. The matter was then progressed in accordance with the Parties' Agreement, after which, it remained in dispute. It is properly before the Board for resolution.

It is the position of the Carrier that the Claimant was afforded a fair and impartial hearing. The Carrier points out that the General Code of Operating Rules (GCOR) states that the Conductor and Engineer are responsible for safety and observance of the rules. The Carrier

asserts that the Conductor and Engineer must ensure that subordinates are familiar with their duties. The Carrier claims that the Claimant violated three rules, which were GCOR 1.47- Duties of Crew, GCOR 1.12 - Alert and Attentive, and GCOR 6.28 - Stopping Clear of Siding. The Carrier notes that the discipline issued was in accordance with the Policy for Employee Performance Accountability (PEPA).

The Carrier acknowledged that the Claimant was one of several employees held responsible for the incident, and that the Claimant worked for the Carrier for less than a year prior to this incident. The Carrier argues that the Claimant was careless of his safety and the safety of others, and that the discipline was warranted.

Matthew Jack, the Conductor of the train, testified that it was a very foggy night on October 30, 2013, when the train pulled into the West Siding Switch Ayers. He said there was no siding sign on the Conductor's side of the track and the only clearance point was orange paint on the ties.

Jason Bechtold, the Road Foreman testified that the train was traveling to the siding from the main track on a foggy night and preparing to stop at the west end of the siding. He said that the train got too close and he threw the train into emergency, but it sideswiped another train.

The Claimant's written statement explained that the train was heading westbound. The crew was looking for clearance markers, but there were no signs, just orange paint on the middle of the track. It stated that by the time they saw the markers, the train ran into a train heading eastbound.

At the hearing, the Claimant testified that he and the others had been conversing all night

about the foggy conditions and limited visibility. He said that there was no siding sign at the west end, but there was a sign on the other side of the train. The Claimant accepted responsibility and apologized for his role in the incident.

The Organization maintains that the Claimant shared responsibility for the operation of the train and insists that the 30-day record suspension was excessive. It argues that the Claimant was a short service employee at the time of the incident and had not been trained as an Engineer. The Organization points out that it was a foggy night when the incident occurred, and there were no siding signs at the west end of the siding. The Organization asserts that a formal reprimand would have been more appropriate. It also argues that the discipline has served its purpose since there were no other incidents during the 36-month review period. The Organization requests that the discipline be removed from the Claimant's record.

The Board has reviewed the record in this case, including the transcript of the formal investigation and the documentary evidence presented at the hearing. The record reveals that there is no dispute that the incident occurred, or that the Claimant bore some culpability for it. Thus, the evidence supports the Carrier's assessment of discipline.

Therefore, under the circumstances presented in this case, and on the weight of the evidence before us on the record, the Board concludes that the censure will not be removed from the Claimant's personal file.

AWARD

The claim is denied.

*Lisa Charles*

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Neutral Member

*Tommy Bosselle*

Carrier Member

*J B Ben*

Organizational Member

Dated April 6, 2018