

**PUBLIC LAW BOARD NO. 5332**

**SYSTEM COUNCIL NO. 6  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

**and**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**Case No. 212**

**Statement of Claim:**

Claim on behalf of Electrician J.D. Warren in Chicago, Illinois, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Warren is unjustly withheld from Carrier's service. We also request his personal record be cleared of this matter.

**Background**

In February 2021, Claimant Justin D. Warren—an employee with six years of service—was employed at the Carrier's Chicago 51<sup>st</sup> Street facility. By letter dated February 9, 2021, Claimant was instructed to report for an investigation:

... to determine your responsibility, if any, in connection with your improper performance of duty when you failed to perform a proper job safety briefing regarding potential safety hazards and/or safeguards while operating Carrier vehicle NS 218460 and/or improper operation of Carrier vehicle NS 218460, resulting in damage to said vehicle. This incident occurred at approximately 4:00PM on 2/3/21 while you were working as the second shift electrician WGL at Chicago 51<sup>st</sup> Street.

An investigative hearing was held on March 17, 2021. Senior General Foreman Timothy Maravich read into the record a statement prepared by Claimant, in which Claimant reported:

At 4:02 p.m., I was driving in Calumet Yard to deliver parts. While pulling in between the inbound and outbound, the work truck got stuck in the snow. I was trying to get the vehicle out of the snow while shifting from drive to reverse to break the tires free. While shifting between the gears, the wheels were spinning and broke free of the spot I was stuck in and because of the icy yard conditions,



the truck slide[sic] back into a garbage container and struck the driver's side brake light. I then got out of the vehicle to look at damage and contact the supervisor on duty. I was not injured in the incident.

Maravich also read into the record a February 4, 2021 statement from General Foreman Nathan Blatt, Claimant's supervisor:

On February 3<sup>rd</sup>, 2021 at 4:02 PM CST I received a call from WGL Justin Warren, he reported to me that he was involved in a vehicle backing incident at Calumet. I asked Mr. Warren, if he was ok. He said he had no injuries. He reported while jogging the vehicle from forward to reverse he struck the dumpster arm during the reverse move. I immediately triggered the information to my supervisors and departed from the 51 shop to the Calumet roundhouse.

Upon arrival Mr. Warren had already moved the vehicle away from the dumpster. I took pictures of the location where the vehicle was stuck, and it included the truck tracks and the dumpster. I asked Mr. Warren the following questions: Was the truck in 4-Wheel Drive? Did he use/see the dumpster out of his side view mirror? The response was No for both questions.

In my investigation of the site I could see where Mr. Warren attempted to jog the vehicle from forward to reverse to get out of the snow rut in 2-wheel drive. Mr. Warren did not pause to assess his surroundings per local bulletins & HV-1 Guidelines. This led to the loss of control of the vehicle during the reverse move, striking the dumpster arm causing damage to NS vehicle 218460 driver side taillight and dented the truck bed. After assessing the incident site, I escorted Justin to the 51 shop where he was administered urine analysis and breathalyzer test. All other reporting requirements did get completed.

Maravich submitted into the record the Preface to the Carrier's HV-1 Rules, which states in pertinent part:

... Every driver operating a Company vehicle must be familiar with these rules and instructions and carry a copy of them in the vehicle for ready reference.

While rules and instructions are written to provide clear direction, occasionally situations arise that are not specifically covered. Under these conditions, the operator of a vehicle should pursue the safest course of action.

He presented portions of HV-1's Guidelines to Safe Vehicle Operation:

DRIVE DEFENSIVELY – There are numerous potential accident situations. Continuously scan the road for hazards. While driving, carefully consider situations you may encounter and how you will deal with each....

DRIVE SKILLFULLY – keep the whole traffic scene in view, and avoid driving in the blind spot of other vehicles....



## GENERAL RULES AND REGULATIONS

...

8. Before moving a vehicle, the driver must adjust mirrors to provide maximum visibility and look back, to each side, and ahead to see if clearances are adequate. Backing a vehicle without providing back-up protection, consisting of a person on the ground for that purpose, is prohibited UNLESS (a) the automobile or other vehicle has an unobstructed view to the rear or, (b) the operator is alone. For all back-up moves vehicle speed may not exceed normal walking speed and the movement must be preceded by a visual check of the back-up route.

Maravich submitted the Carrier's Operating Rule regarding Attention to Duty: Job Safety Briefings, which requires an individual on independent assignment to review various aspects of the job to be performed, including "Weather conditions." He also presented Chicago Local Bulletin 0030 addressing "Parking procedures & designated applicable spaces for both Company & Personal Vehicles at the Calumet Car Shop & Locomotive Trailer." Besides designating specific spaces for company vehicles, Bulletin 0030 provides in pertinent part:

...when parking[,] drivers are required to make a reverse move into appropriate spots orientating their vehicles south towards the roadway.... When a single employee is operating & parking the vehicle, they are required to perform a walk-around inspection of the vehicle to identify all hazards prior to starting their reverse move.

Maravich presented two photographs that General Foreman Blatt had taken on February 3, 2021. One photograph shows the cracked driver's side taillight and adjacent dented and damaged panel on Claimant's truck. The second photograph shows ruts dug into a layer of snow by Claimant's truck's tires, and a dumpster. One of the tire tracks heads directly for the arm of the dumpster.

Acknowledging that HV-1 does not specify the process to follow in removing a truck that is stuck in snow, Maravich emphasized the Preface's language: "While rules and instructions are written to provide clear direction, occasionally situations arise that are not specifically covered. Under these conditions, the operator of a vehicle should pursue the safest course of action."



Maravich noted that Claimant's truck was equipped with four-wheel drive, and that normally employees who are stuck in snow use that four-wheel drive and pull straight out. If four-wheel drive is insufficient to get a vehicle unstuck, employees are to call a tow truck for assistance.

General Foreman Blatt testified that Claimant notified him at approximately 4:02 p.m. that his truck had struck the dumpster. Blatt arrived at the location of the incident at approximately 4:20 p.m. According to Blatt, Claimant had pulled away from the dumpster, but was still stuck and rocking his vehicle between forward and reverse. Blatt asked Claimant whether he had used four-wheel drive or the vehicle's back-up camera. Claimant told Blatt that he had not.

Blatt testified that the area was fairly clear, and a big area was already plowed. The area into which Claimant had gone had not been plowed because it was too tight a space for the plow. Blatt stated that in going into the unplowed area, he would have double-checked his surroundings and made sure all directions were clear for his movements. Blatt testified that, to his knowledge, the dumpster was in its typical location. He stated that Claimant should have used extra care to ensure his vehicle would not be damaged knowing that he was backing up toward the dumpster. Blatt testified that the dumpster had shifted two or three inches when the truck struck it.

Blatt was present at the start-of-shift safety meeting, and stated that the day's weather conditions were discussed. According to Blatt, the February 3 incident was the first time in a year that an employee had gotten stuck and could not get out. He testified that Claimant could easily have put his vehicle into four-wheel drive. According to Blatt, once Claimant did use four-wheel drive, his vehicle came right out. Blatt stated that the incident with the dumpster could have been avoided had Claimant called prior to rocking the truck back and forth.



Testifying on his own behalf, Claimant stated that he had gotten the truck unstuck before Blatt arrived. According to Claimant, there had been a vehicle present blocking his path. He had not been parking. Rather, he had been trying to turn and pull out of the area to approach the crew to which he was supposed to deliver equipment on the other side of the track. In the process, he had gotten stuck on a slick, icy patch where his wheels were spinning. Claimant asserted that he was shifting not only between drive and reverse, but between two- and four-wheel drive. He testified that all four of his wheels were spinning when he slid and collided with the dumpster.

He acknowledged that he could not say he was aware of the location of the dumpster. He claimed that he had done a walkaround prior to trying to get the truck unstuck, and had used his back-up camera and side mirrors. However, the mirrors and camera were not completely clear because of slush and dirt that had been thrown up by the wet roads. Claimant testified that he did not know how he could have avoided the incident with the dumpster. According to Claimant, there were no clear areas in the entire yard. Rather, every path was covered in snow and no plowing had been done.

By letter dated March 26, 2021, Claimant was informed that he had been found guilty of the charges against him, and was dismissed.

### **Contentions of the Parties**

The Carrier contends that it proved that, on February 3, 2021, Claimant failed to comply with the rules regarding the safe operation of a company vehicle. According to the Carrier, Claimant did not ensure that he had adequate clearance for the movements of his vehicle. Claimant admitted that he struck the dumpster behind him and damaged the driver's side taillight and paneling. Claimant also admitted that he was not aware of the dumpster's location at the time of the incident. Moreover, Claimant failed to follow the safest course of action during the



incident—either using four-wheel drive and the vehicle’s back-up camera, or calling for a tow truck to assist him. The Carrier asserts that Claimant engaged in a serious safety violation and was lucky not to have been injured. Furthermore, the Carrier notes that Claimant has an extensive disciplinary record, including four prior serious rules violations in a period of less than twenty-four months. Less than three months before the February 3, 2021 incident, Claimant had been issued a forty-day actual suspension for a serious safety offense and signed a Last Chance agreement. The Carrier submits that in these circumstances, Claimant’s dismissal was justified.

The Organization argues that the Carrier failed to prove Claimant guilty of the charges against him. The Organization emphasizes Senior General Foreman Maravich’s acknowledgement that neither HV-1 nor Local Bulletin 0030 includes any standard procedure for removing a vehicle that is stuck in snow. According to the Organization, Claimant used all the methods available to him to remove his vehicle from the snow—as he testified—and immediately informed his supervisor of the incident. Furthermore, Claimant was not an irresponsible employee. He had been chosen to be Working Gang Leader on his shift, thus endorsed by the Carrier as reliable and conscientious. The February 3 incident was an unintentional accident and not the result of improper conduct by Claimant. The Organization also submits that Claimant’s dismissal was unduly harsh and inconsistent with progressive discipline.

### **Opinion**

Claimant admitted to rocking between forward and reverse in attempting to remove his company truck from the snow in which he had become stuck on February 3, 2021. He also admitted that, as a result, his truck slid into a dumpster located behind his vehicle, causing a broken taillight and damaged paneling. While Claimant sought to shift blame by asserting that the entire yard was covered with unplowed snow, the Board finds the testimony of General




Foreman Blatt to be more credible and persuasive. The amount of snow shown in the photographs Blatt took on February 3—which Claimant testified had not previously been driven on—is insufficient to have created any large drifts, or obscured Claimant’s vision of what was behind his vehicle as he attempted to maneuver it. Claimant’s lack of awareness of his surroundings, and especially that the dumpster was directly behind him, is inexcusable under the Carrier’s safety rules. The Board is convinced that Claimant failed to conduct a job safety briefing to ensure he was aware of all potential hazards, or perform a visual check to identify hazards in the immediate area of his truck prior to reversing it.

The Board is also unpersuaded that Claimant had used his four-wheel drive prior to Blatt’s having suggested it. Claimant asserted that he *had* used four-wheel drive, for the very first time, at hearing. This assertion is notably lacking from his written statement regarding the incident. Claimant may have been frustrated to find himself stuck, but he was not entitled to disregard the common sense safety rules promulgated by the Carrier to protect not only its property but its employees. Moreover, in his six years of service, Claimant had built up a history of serious discipline. As recently as November 12, 2020, Claimant had entered into a last chance agreement after incurring four serious offenses in little more than one year. The Board concludes that Claimant’s dismissal was appropriate, and indeed the only possible action the Carrier could take given Claimant’s last chance status. The claim is denied.

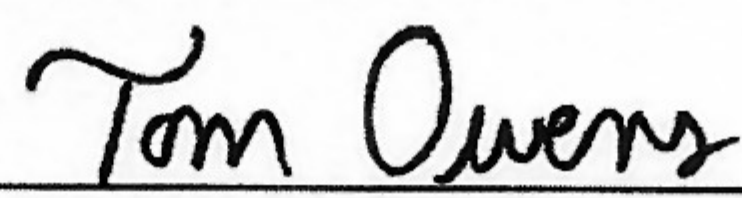
**Award:**

The claim is denied

  
\_\_\_\_\_  
JOAN PARKER, Neutral Member

  
\_\_\_\_\_  
CARRIER MEMBER

DATED: 08/02/2022

  
\_\_\_\_\_  
ORGANIZATION MEMBER

DATED: 08/01/2022