

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41519
Docket No. SG-41780
13-3-NRAB-00003-110427**

The Third Division consisted of the regular members and in addition Referee Roger K. MacDougall when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of S. T. Armstrong, for payment of all lost time, employment rights restored, and his record to be cleared of any mention of the discipline issued in a letter dated April 9, 2010, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the excessive discipline of dismissal without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on March 16, 2010. Carrier’s File No. 35-10-0021. General Chairman’s File No. 10-023-BNSF-188-SP. BRS File Case No. 14554-BNSF.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This case involves the dismissal of the Claimant for allegedly failing to follow the appropriate protocol with a Train Dispatcher when obtaining authority to occupy a track.

On February 18, 2010, the Claimant was a Signal Maintainer assigned to a bucket truck. He was directed to report to a location on the Fallbridge Subdivision near Mile Post 43.60. It is not disputed that the Claimant was the Employee-In-Charge (EIC) that day and was, thus, responsible for obtaining authority to foul the track. The Claimant did contact the Train Dispatcher and did receive his authority. It is at this point that the allegations diverge.

The Carrier contends that, because the truck the Claimant was driving had a Hy-Rail Limits Compliance System (HLCS) he was obligated to “brief with” the Train Dispatcher and provide his truck number to the Train Dispatcher. The HLCS is a safety overlay system that orients an authority granted to an employee, the employee’s specific vehicle, global positioning satellites, the Train Dispatcher’s computer, and any other vehicle, equipment, or trains in the vicinity. When the HLCS is properly engaged, warning signals will alert the employee that he/she has exceeded his/her authority and is in danger of colliding with adjacent equipment, vehicles, or trains. It is also common ground that the Claimant did not so brief with the Train Dispatcher.

The Carrier issued a Notice of Investigation on February 24, 2010 concerning this alleged failure and, after agreed-upon postponements, an Investigation was held on March 16, 2010. Following the Investigation, the Claimant was dismissed on April 9, 2010 for his violation of MOWOR 6.50.5. This Rule reads as follows:

“6.50.5 Hy-Rail Limits Compliance System (HLCS)

The Hy-Rail Limits Compliance System (HLCS) is a safety system designed to monitor the position of HLCS equipped ontrack equipment within the limits of a Track and Time, Track Warrant or Track Permit issued to an Employee in Charge (EIC). On subdivisions where HLCS is in effect, all HLCS equipped ontrack equipment that fouls or occupies the track when using Track and

Time, Track Warrant or Track Permit authority must have the HLCS system activated and associated with the authority.

A briefing between the train dispatcher and the EIC must be conducted to determine if any equipment is HLCS equipped.

All HLCS identification number(s) must be provided to the train dispatcher. If HLCS equipment is not operational, this fact must also be communicated. This briefing is required:

- **Before initial authority is obtained each calendar day (during the Confirmation of Limits Briefing that occurs just prior to copying authority)**
- **Before first authority is obtained following dispatcher shift change**
- **When moving from one dispatching district to another**
- **When changing vehicles**

HLCS on-track equipment identification number(s) of the EIC and that work group must be recorded on the authority form.

When additional work group(s) request to use an authority, the EIC must determine all HLCS on-track equipment identification numbers of the additional work group(s) and report the numbers to the train dispatcher prior to the additional work group(s) fouling or occupying the track. The number(s) must also be recorded next to the name on the 'Multiple Work Group Using the Same Authority Form' by the EIC of the authority.

The train dispatcher must associate all reported HLCS equipment with the authority.

Action to be taken when the HLCS Vehicle Display Unit shows EXCEED

- **When equipment is outside, but in immediate proximity of authority limits and no approaching movement is evident:**

- Move equipment into authority limits
- Contact the Train Dispatcher / Control Operator and be governed by their instructions
- Report circumstances to your supervisor
- When equipment is outside, and not within immediate proximity of authority limits:
- Make emergency radio broadcast and provide flag protection
- Contact the Train Dispatcher / Control Operator and be governed by their instructions
- Report circumstances to your supervisor
- When equipment is within authority limits:
- Check the thumb wheel for proper position
- Contact the Train Dispatcher / Control Operator and be governed by their instructions

When problems are experienced with HLCS (e.g. tracking issues, radio problems, etc.) or the system is not operational, contact the TSOC at (800) 362-9624 to open a trouble ticket.

Employees may test HLCS to verify that they are setting on within the authorized limits. After receiving authority from the dispatcher, notify the dispatcher that you will be testing the HLCS for authority compliance before setting on the track. Place the Hy-Rail vehicle within 15 feet of the track to be occupied. Do not foul the track. Verify that the thumb wheel switch is in the proper position for the track the authority exists on. Activate the HLCS by engaging the steering wheel lock or placing the toggle switch in the on position indicating the vehicle is in the on-rail position. Note: This proximity test can only be conducted off the track and will be used to verify that you are within the authorized limits, not that you will be setting on the correct track.”

The Carrier contends that the Claimant admitted that he failed to brief with the Train Dispatcher and is thus guilty as charged.

The Organization counters that there was no need to brief with the Train Dispatcher. It contends that at no time was the Claimant’s truck within 200 feet of the

rail. He never fouled the track and never intended to put on with the truck. Instead, he worked trackside without his vehicle. Thus, it asserts, no briefing was required and the Claimant did not violate any Rule.

It seems, to the Board, that the intent of the Rule is aimed squarely at vehicles that occupy the track. It is less clear what should happen when a vehicle is HLCS-equipped, but is never intended to be foul of the track. There is, however, merit in the argument of the Carrier that a briefing might still be required. The Claimant had a truck equipped with HLCS. He had a track authority. There might have been a change in circumstance when he would have needed to put on for some repair, even though that was not his intent when he obtained the authority. The safer course of action would have been to brief with the Train Dispatcher and make sure that the system was working as intended. By doing so, it could alert others if the truck got near the track.

However, in the circumstances, with the Rule as written and with the potential for misunderstanding, the Board finds it appropriate to reduce the penalty to time served, without compensation.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of February 2013.

Labor Member's Dissent to Third Division Award No. 41519

Neutral Member: Roger K. MacDougall

The undersigned respectfully objects to and dissents from the majority's opinion in Award No. 41519.

In this case, the Neutral ascertains that *"...the intent of the Rule is aimed squarely at vehicles that occupy the track. It is less clear what should happen when a vehicle is HLCS-equipped, but is never intended to be foul of the track."*

Yet, then, he concludes, *"There is, however, merit in the argument of the Carrier that a briefing might still be required. The Claimant had a truck equipped with HLCS. He had a track authority. There might have been a change in circumstance when he would have needed to put on for some repair, even though that was not his intent when he obtained the authority."*

Clearly, such reasoning, based on surmise and speculation, has no place in the arbitral arena, and we reject it in principle. It is not the Arbitrator's job to provide clarity to Carrier's unclear Rule, nor is it his responsibility to create scenarios in which the Claimant might have violated the rule.

The Minority does not concur with this decision. Consequently, Third Division Award No. 41519 is without precedential value, and I must dissent.



John Bragg
NRAB Labor Member
Vice President
Brotherhood of Railroad Signalmen