

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42359
Docket No. MW-42377
16-3-NRAB-00003-130399**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
(BNSF Railway Company (former Burlington
(Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal by letter dated July 24, 2012) imposed upon Mr. R. Malcom for alleged violation of MOWOR 10.3 Track and Time and MOWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS) in connection with charges of alleged failure to pilot the switch grinder within authorized limits and exceeded the main track authority at approximately 1910 hours on June 15, 2012 at Mile Post 32.6 on the Barstow Sub near the East siding switch Warner while assigned as pilot for Switch Grinder RW12 was arbitrary, capricious, disparate and in violation of the Agreement (System File C-12-D070-15/10-12-0601 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant R. Malcolm shall now receive the remedy prescribed by the parties in Rule 40(G).”

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.

On June 15, 2012, the Claimant was a pilot for switch grinder RW12 and exceeded his track authority limits. The Carrier determined that he had violated MOWOR 10.3 and 1.50.5. Because he had a prior Level S violation and was within a 12-month review period, the Claimant was dismissed.

It is the position of the Carrier that during the investigatory hearing, the Claimant admitted that he violated MOWOR 10.3. This admission of guilt constitutes substantial evidence supporting the discipline.

The Organization argues that the rules were not cited in the Notice of Investigation, making it impossible for the Claimant to prepare a defense. It argues that as pilot, he was not driving the machine. The Organization notes that he fully cooperated, was truthful and admitted he was confused. The Organization also argues that the investigatory hearing was unfair because the Carrier did not present Division Engineer Craig Morehouse.

The Board carefully reviewed all the evidence. We find that there has been no prejudice to the Claimant as a result of any of the alleged procedural violations. It is not necessary for the Notice of Investigation to cite specific rules so long as they were included in the investigation. The Notice was adequate to alert the Claimant and the Organization to the incident being investigated. The Claimant acknowledged exceeding his track authority limits. As a result, there was no credibility decision, so it was not necessary for the decision maker, Morehouse, to have attended the hearing. It was the Claimant's responsibility to know the limits of his track authority and to be aware of his location so that he did not breach them. He failed to do this. Insofar as this was his second Level S offense, the Carrier was within its rights to terminate him.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 30th day of August 2016.