

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43687
Docket No. MW-45062
19-3-NRAB-00003-180538**

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

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference**

PARTIES TO DISPUTE: (

(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. L. Bell, by letter dated February 13, 2017, for alleged violation of MWOR 6.3.1 Main Track Authorization and MWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS) in connection with allegedly exceeding the limits of his authority was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File S-P-211 I-G/11-17-0181 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Bell shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered including lost overtime, expenses and benefits.”**

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.

The Carrier has alleged that the Claimant fouled the track without authority and failed to comply with procedures following a Hy-Rail Limits Compliance System (HLCS) exceeds alarm while working as a track inspector on November 4, 2016. There is no controversy regarding the fact that the Claimant received an HLCS exceeds alarm.

According to the Carrier, he immediately backed up at 32 mph; it sees this as an indication that the Claimant knew he was outside his authority. The Carrier acknowledges the gap of time from the exceeds to the new authority was only three minutes. In the Carrier's perspective, track authority is serious by nature. Because the Claimant had two previous violations, one involving track authority, it deems dismissal to be the appropriate penalty.

The Organization maintains the Carrier's Notice of Investigation was entirely insufficient because it refers to a vehicle that was not assigned to or operated by the Claimant on the day in question. It also protests the Hearing Officer's meeting with witnesses prior to hearing as a violation of the obligation to provide a fair investigation. The Organization notes that after a break, the hearing officer advised that he had a Carrier witness already on his phone. In its view, these actions breached the Carrier's obligation to provide a fair hearing.

As to the merits of the case, the Organization maintains the Carrier failed to meet its burden of proof because it relied solely on a GPS that has been shown to be completely unreliable. It points out that one witness stated the Claimant exceeded by 212 feet, while another said it was over 250 feet. It concludes the Carrier cannot even say how far the Claimant exceeded. Further, the Organization references Carrier's Exhibit 9 and 9A which give the Claimant's GPS location over a nine-minute time period. Though it is fully established that the Claimant was not moving during that period, the GPS data show him roaming with variations in mileposts and even territory. The Organization insists that no employee should lose their job over such unreliable data. The Carrier admitted it had found instances of GPS inaccuracy up to 52 feet but asserts the Claimant's incident was far beyond the GPS's greatest error.

Roadmaster Hunt stated he got a phone call from the Claimant stating he had received an exceeds alarm. According to Hunt, the Claimant said he was not in fact outside his limits. He said he subsequently received notification by email of the Claimant's exceeds alarm at the control point Lowell at the eastbound 6 control signal Lowell near milepost 1781 on the Scenic 7 Subdivision.

The Notice of Investigation had a typographical error, identifying the Claimant's vehicle as 24289 when the correct number is 24489. In our view, this error did not impair the effectiveness of the Notice; the Claimant was well aware of the exceeds alarm incident and that it would be investigated. The Board does not find that the conduct of the hearing officer was so egregious as to defeat the fairness of the hearing.

It was the Claimant's responsibility to obtain track authority to hi-rail, perform track inspections, and stay within his authority. The Board is not persuaded that backing up when an exceeds alarm goes off is any indication of guilt. Rather, it is a natural and predictable response to the alarm.

The vehicle log shows the exceeds authority. The flaws in the GPS system do not persuade us that there was no breach of authority. The maximum error in the GPS was placed at 52 feet, without rebuttal. There is no evidentiary or logical reason to alter this designation of fallibility; there is no evidence to support a conclusion that the GPS is capable of error beyond that. Certainly, it waived and registered changes in location when none existed. But on no occasion did any erroneous location vary beyond the 52-foot maximum acknowledged by the Carrier.

The evidence clearly established that the GPS System lacked precision. Witness testimony was equally imprecise. The Organization's point that the system lacked precision is well taken. Even so, lack of precision and utter uselessness are two entirely different concepts. The evidence of record demonstrates the system was accurate enough to have definitively placed the Claimant outside his limits. The GPS wobble when the Claimant was not moving establishes that the GPS system cannot be relied upon to tightly specify the location of an individual, but does not defeat the ability of that system to locate an employee within 52 feet. The Carrier's evidence that the Claimant exceeded his limits must be deemed substantial.

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 18th day of June 2019.