

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43690  
Docket No. MW-45095  
19-3-NRAB-00003-180589**

**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. J. Herzog by letter dated April 21, 2017 for violation of MWOR 6.50.5 in connection with his alleged failure to activate the Hy-Rail Limits Compliance System (HLCS) on February 15, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-17-D070-7/10-17-0200 BNR).**
- "(2) As a consequence of the violation referred to in Part (1) above, Claimant J. Herzog shall be reinstated to service with seniority and all other rights and benefits unimpaired, have his record cleared of the leveled against him and he shall be compensated for all wage 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 alleges the Claimant hy-railed for an hour and a half with no HLCS. Insofar as this would be his third Level S during the review period, it maintains dismissal is appropriate. The Organization faulted the Carrier for using a PowerPoint presentation during the Investigation which established unfair prejudgment of the case. It maintains the Claimant reasonably believed he was indeed using the HCLS system.

Insofar the Claimant's dismissal was upheld in Case No. 3-180588, this case is moot. Accordingly, it is dismissed.

**AWARD**

Claim dismissed.

**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.