

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43854
Docket No. SG-45083
19-3-NRAB-00003-180496**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when the 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.J. Chelf, for compensation for all lost wages, including overtime, with all rights and benefits unimpaired, and any mention of this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Level S (Serious), 20-day actual suspension and 10-day record suspension with a 1-year review period to the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on March 15, 2017. Carrier’s File No. 35-17-0019. General Chairman’s File No. 17-038-BNSF-121-T. BRS File Case No. 15817-BNSF. NMB Code No. 119.”

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 Claimant held the position of Signal Maintainer in the Carrier's service. On February 6, 2017, the Claimant was given notice of an investigation in connection with the following charge:

“An investigation has been scheduled... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged violation of exceeding authority number 749-62 limits while operating truck 24650 at approximately 1333 hours CT at milepost 96, and failing to notify your supervisor. This occurred on February 1, 2017 at approximately 1333 hours CT on the Wichita Falls Subdivision.”

After a formal investigation on March 15, 2017, the Claimant was found in violation of MWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS); MWOR 14.3 Operating With Track Warrants; and MWSR 1.2.8 Reporting and was assessed a 20-day actual suspension and a 10-day record suspension with a 1-year review period.

On February 1, 2017, the Claimant received a trouble call at a crossing on his assigned territory. During a job briefing, the Claimant learned he would utilize the track warrant of Mr. Roach, the Employee in Charge (EIC) between Mileposts 94 and 96 on the Wichita Falls Subdivision. Prior to setting his truck on the tracks, the Claimant was approached by Mr. Odem, the local Track Inspector, who also needed to set his vehicle on the tracks. They had joint authority to Milepost 96, but Odem had track authority all the way to Wichita Falls.

The Claimant followed Mr. Odem beyond Milepost 96 when he noticed that his HLCS was active, indicating that he had exceeded his authority limits. The Claimant said that he was following Mr. Odem and thinking about what tools he needed next, so he “just lost track of where” he was.

The Claimant immediately removed his vehicle from the tracks and contacted the Dispatcher. Claimant testified that the Dispatcher told him that he would take care of it, so he thought he had done all he needed to do. The Claimant did not inform his supervisor.

The Carrier contends that neither of the procedural objections raised now by the Organization were identified during the investigation hearing. The Carrier contends that although it did not cite a specific rule in the investigation notice letter, both the Claimant and the Organization were aware of the charges as required by Rule 54. The Carrier contends that the one-day postponement of the investigation was harmless error and was waived by the Organization's failure to object at the time.

With respect to the merits, the Carrier contends that the Claimant admitted to exceeding his authority limits, in violation of MWOR 14.3, simply because he was lost in thought and lost his situational awareness. The Carrier contends that the Claimant also admitted to failing to notify his supervisor after the incident, in violation of MWOR 6.50.5. The Carrier contends that the level of discipline assessed is appropriate for a serious violation.

The Organization contends that the Investigation Notice was flawed because it failed to list any alleged Rule violations or identify the Rules at issue. It further contends that prior to the start of the March 4, 2017 investigation, the Carrier unilaterally postponed the Investigation without the Organization's consent. The Organization points out that Rule 54 states, "The date for holding an investigation may be postponed if mutually agreed to by the Carrier and the employee or his duly authorized representative."

The Organization contends that the record shows that the Claimant was unsure what to do when he realized he had exceeded his limits, so he relied on the Dispatcher's statement that he would take care of it. The Organization contends that the Claimant never endangered himself or others, because the Claimant was following Mr. Odem, who had track authority beyond Milepost 96. Therefore, the Claimant was protected even after he exceeded his own track authority.

The Organization contends that the Claimant may have lost track of where he was, but the penalty imposed by the Carrier is harsh and excessive, especially since the Claimant immediately stopped when the HLCS alarm sounded and got off the tracks.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence de novo. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done

had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against the Claimant.

The Claimant admitted that he exceeded his track authority and that he failed to notify his supervisor of the incident. Both incidents appear to be caused by inattention rather than deliberate action. But on the rails, safety depends on careful attention to the tasks at hand. Working within one's limits is essential while working on the tracks. The Claimant did not say that he was relying on Odem's authority, he admitted he lost track of his own. If the Claimant knew to alert the dispatcher when he exceeded his limits, he should have also known to notify his supervisor. Where there is an admission of guilt, there is no need for further proof. This Board finds that substantial evidence exists to support the findings against the Claimant.

We have reviewed the procedural arguments raised by the Organization, and we find them to be without merit. The objections were waived when they were not raised during the on-property investigation and they cannot now be resurrected before this Board.

This Board finds no reason to disturb the penalty assessed by the Carrier. The 20-day actual suspension and 10-day record suspension with a one-year review period to the Claimant was not excessive for a Serious Violation.

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 4th day of September 2019.