

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44249
Docket No. MW-45562
20-3-NRAB-00003-190425**

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

**(Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference**

PARTIES TO DISPUTE: (

**(BNSF Railway Company (Former Burlington Northern
(Railroad Company)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [Level S thirty (30) day record suspension with a one (1) year review period] imposed upon Mr. C. Snow, by letter dated January 8, 2018, for violation of MWOR 6.3.1 Track Authorization and MWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS) in connection with his alleged track authority violation on October 20, 2017 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-18-D040-15/10-18-0108 BNR).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant C. Snow shall have 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 as described in the initial claim.”**

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 Hy-rail Limits Compliance System ("HLCS") is a safety system that uses a Global Positioning System ("GPS") to monitor the position and speed of BNSF vehicles and associate that position with track authority. It gives audible and visual warnings to when a vehicle is approaching the end of their limits of authority, or has exceeded those limits.

On the day in question, the Claimant was hy-railing when his HLCS alarms indicated he had exceeded the limits of his authority. He then backed the vehicle up and re-entered the limits of his authority. In the meantime, the train dispatcher received a warning that the Claimant's vehicle had exceeded its limits, and immediately contacted the Claimant to ascertain his location. The Claimant reported that he was not outside of his limits. Based on the Claimant's statement, the dispatcher assumed the HLCS had malfunctioned. Roadmaster Bertoni was alerted by the Remote Audit Desk and contacted the Claimant. During that conversation, the Claimant admitted he had been outside his limits.

The Organization asserts there is no proof in the transcript of the investigation to support the discipline, and the Carrier's data has not been shown to be reliable. The Claimant was operating a spare truck and its lights appeared to be malfunctioning on the day in question. He cannot be disciplined for failure to report exceeded limits when there was nothing to report.

In a statement made at the time of the incident, the Claimant asserted his light went red without being amber first, and his limits were not actually exceeded. The event log for the Claimant's vehicle showed that he had exceeded his authority. The Carrier's GPS system generated a graph showing the Claimant outside his limits. The Carrier notes that the Claimant changed his story at the investigation, and made new assertions about flickering lights and failed warnings.

The Carrier does not have to prove guilt beyond a reasonable doubt, or even guilt by clear and convincing evidence. Its burden is to produce substantial evidence to support its conclusion of a rule violation. In this case it has produced enough evidence to meet that burden. The Claimant's assertions of malfunction were not corroborated; the Claimant filed no report of any problem with the system. It was the Claimant's responsibility to know where he was in terms of the limits of his authority at all times; even if a warning light failed, this would not alter his fundamental responsibility to know where he was. The exceeded limits warning the Claimant admitted receiving, the concurrent notification of the dispatcher, the event log and the GPS records are adequate to establish substantial evidence in this case.

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 23rd day of October 2020.