

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45156  
Docket No. MW-47488  
24-3-NRAB-00003-220549**

**The Third Division consisted of the regular members and in addition Referee Jeanne M. Vonhof when award was rendered.**

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

**PARTIES TO DISPUTE: (**  
**(BNSF Railway Corporation**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- 1) The discipline (dismissal) imposed upon Mr. M. Jones, by letter dated February 2, 2021, for violation of MWOR 1.3.1 and MWOR 6.3 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (System File C-21-D070-10/10-19-0335 BNR).**
- 2) As a consequence of the violation referred to in Part (1) above, Claimant M. Jones shall be reinstated to service, have his record cleared of the charges leveled against him and he shall be compensated in accordance with Rule 40G of the Agreement”**

**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.**

Claimant Michael Jones had worked for the Carrier for nine years at the time of the incident that led to his dismissal. His position at the time of the incident leading to his dismissal was Track Inspector out of Tecumseh, Nebraska. The Claimant testified that he had been in that position for approximately four months.

By letter dated December 17, 2020 the Carrier directed the Claimant to report for a formal investigation into allegations that, on December 10, 2020, the Claimant failed to stay within the limits of his track authority at or near Mile Post 112.3 West Preston Switch on the St. Joseph Subdivision.

By letter dated February 2, 2021 the Carrier informed the Claimant that during the investigation it had been determined that he was in violation of MWOR 1.3.1, Rules, Regulations and Instructions, and MWOR 6.3 Track Occupancy. The Claimant was dismissed. He has two other serious safety violations on his record and was still in the review period for the most recent one when this incident occurred.

By letter dated February 5, 2021, the Organization appealed the Carrier's decision. The claim was subsequently progressed on the property in the usual manner and no accord could be reached. This claim is now before this Board for final adjudication.

The Claimant was charged with a serious safety violation: briefly exceeding his track authority. On December 10, 2020, the Claimant was hrrailing on the main line with his supervisor as a passenger, Roadmaster Zeb Reed. The Claimant testified that he was to inspect all of the sidings. The truck had authority on the main line up to the Insulated Joint (IJ) demarking the end of the main line and the beginning of the West Preston siding where his track authority ended.

As he came upon the IJ, the Claimant realized he did not have track authority for the siding and stopped the truck. He told the Roadmaster he did not have authority to proceed and used Smart Client Mobile to request authority for the siding. He received authority almost immediately, with about a one-minute delay between requesting and receiving authority.

The Carrier presented electronic information showing that the truck was 65 feet past the IJ when the truck stopped. The HLCS system is designed to alert drivers when they get near the end of their authority by a flashing red light and an alarm. However, neither the Roadmaster nor the Claimant saw or heard an alarm, according to their testimony. Moreover, Dispatch is automatically notified by the system if a truck is

nearing or exceeds its authority limits so the dispatcher can immediately call the driver. In this instance, the evidence demonstrates that the dispatcher did not call. The evidence also demonstrates that the HLCS data indicates only that the Claimant's truck was "NEARER LIMITS" and did not say "EXCEED LIMITS."

The Claimant described the action as a "mistake" and "exceeding his track authority" when he wrote his statement after the incident. However, at the investigation hearing, the Claimant testified that he thought he was right on top of the IJ because he could not see it. The Roadmaster testified that he did not see the IJ either.

The Board finds that this claim presents unique and unusual circumstances. Based on this record, the Board concludes that the Claimant should have been aware of his surroundings; however, there are mitigating circumstances present here, including that the warning technology did not activate. Under these unusual circumstances, the Board concludes that the Claimant shall be returned to work, but without compensation for the period following his dismissal. The Board further orders that Claimant's return to service be subject to a twelve-month review and be regarded as a last chance. Any serious safety violations in that period, if proven by substantial evidence, might reasonably be considered to provide grounds for dismissal. This remedy is based upon the unique facts and circumstances of this claim and should not be cited or referenced in any case moving forward.

### **AWARD**

Claim sustained in accordance with the Findings.

### **ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 22<sup>nd</sup> day of February 2024.