

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 75, (Case No. 75)**

**BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION - IBT RAIL CONFERENCE**

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Samantha Rogers, Carrier Member
David D. Tanner, Employee Member

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing October 28, 2010, when Claimant, Charles E. Gilliam (361911), was issued a Level S 30-day Record Suspension with 1 year probation, for failure to clear authority limits prior to releasing main track authority while working as a track supervisor on September 13, 2011. The Carrier alleged violation of MOWOR 6.3.1 and MOWOR 6.50.5.**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be compensated for his lost time and expense and otherwise made whole."
(Carrier File No. 14-11-0001) (Organization File No. 170-13N1-1091.CLM)**

FINDINGS:

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

On September 17, 2010, Claimant was directed to attend a formal Investigation on October 8, 2010, which was mutually postponed until October 28, 2010, concerning in pertinent part the following charge:

"...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to obtain proper track authority limits while working as a Track Supervisor on TINS0568 on the Seligman Subdivision at approximately 1030 hours on September 13, 2010.

This investigation will determine possible violation of MOWOR 6.50.5 and MOWOR 6.3.1."

On November 19, 2010, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30 Day Record Suspension with a one year probationary period.

It is the Organization's position the Carrier assessed discipline to the Claimant for his alleged failure to clear Authority Limits prior to releasing Main Track Authority which was outside of what the Claimant was charged with in its Investigation Notice that alleged he failed to obtain proper track authority. It argued the charges were different that what he was found guilty of, therefore, he was never found guilty of the actual charges and because of that the Carrier did not meet its burden of proof. It closed by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the case is straight forward. It argued the question is did the Claimant hyrail outside the track and time authority he had been given? According to it, the answer is yes, and it further asserted that the Claimant admitted to the violation in his written statement and his testimony. Lastly, it argued that safety violation had the potential for serious consequences and because of that it asked that the discipline not be disturbed.

The Board has thoroughly reviewed the transcript and record of evidence and has determined that the Investigation was held in accordance with Rule 13(a) the Discipline Rule and Appendix No. 11.

There is no dispute between the parties that the Claimant admitted he hyrailed outside his track and time authority on September 13, 2010. Shortly, after the incident Claimant made a written statement (Exhibit 4 of the Investigation) which stated:

"To whom it may concern:

I, Charles Edward Gilliam, II did, in fact, find myself in truck 19370 on main 1 between the east bound control signal, I think that's, West Winslow and CP 2853 without authority on September 13, 2010."

On page two of the transcript, the Claimant testified about the incident of September 13th and stated in pertinent part the following:

"Charles E. Gilliam: ...I met the Roadmaster we talked for a little while. We had a geometry truck that was in the yard there and we were discussing that when he looked at me he said, he asked me did you exceed your limits there, you know, East


Winslow this morning. And I looked at him and I said yes I did. (*Underlining Board's emphasis*)

Claimant further acknowledged on page 30 of the transcript that he was outside his track limits. The Organization makes an interesting semantics argument in behalf of the Claimant regarding whether or not the Claimant was found guilty of something other than what he was charged with. Despite the ingenuity of the argument it is clear that the Claimant and the Organization recognized what the Claimant was charged with and understood that it was alleged that he was in violation of MOWOR 6.50.5 and MOWOR 6.3.1. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged as he was outside the track and time authority he had been given.

The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant had approximately 32 years of service with a very good work record. Nonetheless, Claimant's violation was of a serious nature and even though no one was harmed that does not lessen the potential for bodily harm and/or death. Review of the discipline exercised reveals that it was in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA). The Board finds and holds the discipline will not be set aside because it was not excessive, arbitrary or capricious. The claim will remain denied.

AWARD

Claim denied.


William R. Miller, Chairman & Neutral Member


Samantha Rogers, Carrier Member


David D. Tanner, Employee Member

Award Date: 1-10-12