

PUBLIC LAW BOARD NO. 7585

Case No. 1/Award No. 1
Carrier File No.: 10-11-0549
Organization File No.: C-11-D040-31
Claimant: D. Maahs

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

FACTS:

Dennis A. Maahs was hired by BNSF in October of 1975 and worked continuously since that time without disciplinary action being imposed. Prior to the incident here concerned, he worked in the capacity of Track Inspector for about three years. He received his 2011 MOWR Requalification on March 29 of 2011.

At approximately 1304 on May 11, 2011, Maahs exceeded his track authority (milepost 229 to 197) by roughly three truck lengths. He immediately called his supervisor, William Barbee, and reported the breach. The HLCS System subsequently triggered an email from NOC to Barbee.

Maintenance of Way Operating Rule 14.3 requires an employee to stay within the limits of the applicable Track Warrant. Under the Policy for Employee Performance Accountability (PEPA), violation of an operating rule falls within the category of serious violations. The PEPA states: "The first Serious violation will result in a 30-day record suspension and a review period of 36 months. Exception: Employees qualify for a reduced review period of 12 months if they demonstrate a good work record, defined as having at least five years of service and having been both reportable injury-free and discipline-free during the five years preceding the date of the violation in question."

Investigation took place on June 7, 2011. On June 29, 2011, Maahs received a Level S 30 Day Record Suspension for failure to operate his inspection vehicle within his track authority limits. He was required to complete a training and recertification test and was placed under a three year review period.

CARRIER'S POSITION:

There is no question but that Claimant violated Rule 14.3, a serious violation. He should be held accountable for his actions. Considering his work record, he qualified for the 36 month review period.

ORGANIZATION'S POSITION:

Claimant testified that when he breached the limits, he was on the radio trying to coordinate a meeting for the next day. The HCLS was on the floor and he neither heard nor saw any warning because his eyes were on the track, and with the radio going, the HLCS cannot be heard. As soon as he realized he was past the limits he hit the brakes. He exceeded his authority by a mere three truck lengths. The Conducting Officer refused to admit evidence during the investigation, but relied on Claimant's personal record without introducing it or giving Claimant an opportunity to review it. The discipline was too harsh.

DECISION:

Clearly Claimant violated Rule 14.3, a serious violation. It was his responsibility to stay within his track authority despite any distractions, and to be aware of the limitations of his HLCS System. His record was, and should have been, a consideration in determining disciplinary action, and as such, it should have been included in the investigation. Claimant qualified for more lenient treatment under the PEPA; having worked for the Carrier over 35 years, he had well over minimum of five years' service. During the five years preceding the alleged violation, he had no injuries and no discipline was imposed. As a result, he qualified for the reduced review period of 12 months.

AWARD:

The claim is sustained in part. The 30-day record suspension is affirmed but the review period shall be reduced to 12 months.

ORDER:

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made. The Carrier is to comply with the award on or before 30 days following the date the award is adopted.

March 19, 2013; Cleveland, Ohio



Patricia T. Bittel, Neutral Member



Gary Hart, Labor Member



D. J. Merrell, Carrier Member