

P.L.B. No. 7585
Case No. 30
Award No. 30

PUBLIC LAW BOARD NO. 7585

CARRIER FILE NO. 11-11-0317

ORGANIZATION FILE NO. S-P-1600-C

CLAIMANT: Chris M. Helke

Parties To Dispute:

Brotherhood of Maintenance of Way Employees Division – IBT
& BNSF Railway Company

Statement of Claim: *The Carrier violated the Agreement on April 26, 2011 when it assessed Claimant Chris M. Helke a Level S 30-day Record Suspension with a 3-year review period for alleged violation of Maintenance of Way Operating Rule 6.50.5 Hy-Rail Limits Compliance System (HLCS), for alleged failure to conduct an HLCS briefing with Dispatcher when moving to a different dispatching district, while working on the Lakeside Subdivision on February 9, 2011.*

Background Facts:

Maintenance of Way Operating Rule 6.50.5 states:

A briefing between the train dispatcher and the EIC must be conducted to determine if any equipment is HLCS equipped. All HLCS identification number(s) must be provided to the train dispatcher. If HLCS equipment is not operational, this fact must also be communicated. This briefing is required: when moving from one dispatching district to another.

On February 9, 2011, Claimant was working as a Grapple Truck Driver but had agreed to co-pilot the Star Car. At approximately 1330 he reached the limits of Pasco East and talked to the Boyer West dispatcher, received his permit to move to the Boyer West territory and went through a switch. At that point, his HLCS went red, he stopped, called Boyer West and while on hold, his HLCS went green. The conversation he had at this point was transcribed as follows:

Dispatcher: South Boyer West. Over

Helke: Helke here. Say, I got to give you a couple of HLCS numbers I forgot to add on. Over.

Dispatcher: The Star Car 482 and the 216 ...262 or something like that?

Helke: Yeah. That is correct. Over.

Dispatcher: They're added now. Over.

Helke: Okay. Sorry about that. Thank you. Out.

Dispatcher: Roger. Out.

Claimant admitted during the Investigation that he violated the rule in question, though the Organization maintains he did not, and argues the penalty is far too severe for the offense, since he was never outside his limits and the error was purely procedural. The Organization also contends there was a failure of proper notice for the Investigation and there was impropriety during the Investigation by way of admission of documentary evidence without an opportunity to cross examine the preparers of the documents.

Opinion of the Board:

The Organization contends the Investigation constituted a violation of Rule 40 in that the Notice of Investigation immediately preceding the hearing did not include a signature line for the employee's representative and the hearing was in a different room than the one designated on the Notice.

Rule 40 requires five-day notice to both the employee and his/her representative to afford an opportunity to prepare witnesses. It says nothing about signatures. There was no showing that this rule was violated; the Organization was present and did not request a postponement in order to present witnesses. The fact that the room change was within the same building and all persons knew which room to go to does not provide a basis for throwing out the Investigation.

The Organization argues documents were improperly submitted into evidence without an opportunity to cross examine the preparer. The documents of concern appear to be the transcript of the radio transmission between the Boyer West Dispatcher and Claimant, and possibly also documents pertaining to track authority. This objection appears to be a hearsay objection, to which an established exception is carved out for documents made in the ordinary course of business. It follows that the objection was properly overruled.

Roadmaster Jeff Chicks testified that after the incident occurred, Claimant called him and admitted his failure to brief the dispatcher. He acknowledged that after the alarm went off Claimant only travelled 10-20 feet and did not breach his limits.

Claimant felt his discipline was unduly harsh, since there are protections when copying authority on a computer that did not exist in his situation.

Under MOWOR 6.50.5, the briefing is flatly required and must include identification to the dispatcher of all HLCS numbers. Claimant's situation is mitigated by the fact that the Dispatcher had them already. However, it is a concern to the Board that the immediately preceding transmission occurred at 15:30:43, yet Claimant did not call back to make

corrections until 15:39:28, when his alarm went off. This was not a momentary lapse which he immediately rectified; he completely forgot.

The Organization argues there are some mitigating circumstances in the case: Claimant never went outside his authority, he immediately advised Chicks of the incident and the Dispatcher already had the numbers. However, in the Board's assessment, these are not so much mitigating circumstances as they are other rules which might have been but were not violated. The fact that the Dispatcher already had the numbers is not a mitigating circumstance because Claimant had no way to know this; he did not provide them.

At the end of the day, the Board must conclude that the violation was indeed rather pronounced. As a result, the Carrier was within its discretion to designate the offense as a Level S 30-day record suspension. However, the three-year review period for this procedural rule violation is excessive and falls outside the parameters of just cause.

AWARD:

The claim is granted in part. The Level S 30-day suspension is upheld, however the period of review must be reduced to 12 months.

Order:

The Carrier shall comply with the terms of this Award immediately upon receipt of a fully executed copy thereof.

Patricia T Bittel

Patricia Thomas Bittel
Chair and Neutral Member

Donald J. Merrell
May 22, 2014

Donald Merrell,
For the Carrier

Gary J. Hart

Gary Hart,
For the Organization

Dated: April 25, 2014