

Award No. 9
Case No. 9
NMB Case No. PLB-07602-000009

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY	)
EMPLOYES DIVISION—IBT	)
	)
v.	)
	)
BNSF RAILWAY COMPANY	)

Carrier File No. 11-12-0043
Organization File No. S-P-1624-G

Claimant — Gregory R. Murphy

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The discipline (dismissal) imposed upon Mr. Gregory R. Murphy by letter dated October 5, 2011, for alleged violation of MOWOR 1.1.2 Alert and Attentive and MOWOR 6.3 Track Occupancy, in connection with charges of alleged failure to ensure all equipment and employees were clear of the limits before track authority was released, failure to be alert and attentive, and improperly reporting clear of Track and Time while working as Track Inspector assigned to TINS1565. As a result, hy-rail vehicles occupied the track without authority at approximately 1900 hours, August 21, 2011, at or near MP 79 on the Bellingham Subdivision, in the vicinity of Burlington, Washington.**
- 2. As a consequence of the violation referred to in Part (1) above, Claimant Gregory R. Murphy shall now receive the remedy prescribed by the parties in Rule 40(G).**

BACKGROUND:

On August 21, 2011, at about 1900 hours, the Claimant was working as a Track Inspector on the Bellingham Subdivision near Burlington, Washington. He was working his way south in conjunction with another Track Inspector, Lonnie Bell, who was working his way north. Their intent was to coordinate their track and time authorities and ultimately meet somewhere near Burlington. Track and time authorities are updated as inspectors complete their work in one area and move to the next section of track to be inspected. Both Claimant and Track Inspector Bell were working on the track in separate hy-rail vehicles. As they neared the end of their inspections, Bell had reached the end of his limits; the next area of track was the one Claimant was just entering, at or near MP 79. Claimant and Bell held a job briefing to determine whether Bell should get a new track and time authority or associate his vehicle with Murphy's so that they could enter the next section of track together. They agreed that Murphy would hold the track and time and associate Bell's vehicle with his authority. This would protect both vehicles on the same stretch of track so that they could finish their work together. As the person holding the track and time limits, Claimant was responsible for coordinating and making changes with the Dispatcher. Claimant needed to release the authority for the track he had been on as he entered a new section of track with the new authority for both himself and Mr. Bell and report the track he was leaving as clear. Unfortunately, instead of releasing the track and time authority for the section of track he was leaving, Claimant accidentally released the track and time authority for the new track section he and Bell had just entered, indicating that the track was clear when in fact, both hy-rail vehicles were on it. When a section of track is reported as clear, Dispatch is free to run trains through the section, so the danger of reporting as clear tracks that are occupied is evident. The red "out-of-limits" light in the HLCS system on Claimant's vehicle lit up immediately and he realized what he had done. He immediately notified Bell and Dispatch and contacted his supervisor. It appears that an exceeds-limits alarm also rang at Dispatch. Claimant's statement about the incident reads:

Lonnie Bell called and ask if I would associate his Truck with my Track and Time and I told him I would. While I was trying to give up my time behind me, I accidentally gave up my time under us. When the light went Red I called Lonnie what happened [sic] and get off the track. Then I talked to the Dispatcher and set off.

He also called his supervisor to report what had happened. Track Inspector Bell also made a statement:

I called Greg to associate my vehicle with his track and time. Once associated I proceeded north from NSS Stanwood. My HLCS went red at MP59 approximately. I backed up to a crossing close by and cleared the track immediately.

In short, the Claimant accidentally released the wrong authority, immediately realized his mistake, and reported it properly, also immediately. No one was injured and no damage to property occurred. Claimant, Bell and the supervisor met shortly after the incident to discuss what had happened.

At the investigation, the Claimant explained that he had been having trouble all day with his computer and its smart-mobile system shutting off without notice. When he fired the system back up, he inadvertently clicked the "clear authority" button on the wrong section of track, the one between Burlington to the North Siding Switch at Stanwood that he and Bell were already occupying. He apologized for his mistake and stated that it may have been caused in part by number of hours he had already worked that weekend. In addition, he pointed out, track inspectors can receive anywhere between five and ten authorities a day, which makes it more likely that mistakes will occur. He acknowledged that he should be subject to some discipline.

Following the investigation, the Carrier concluded that Claimant had violated MOW Operating Rule 6.3.1, Main Track Authorization, when he failed to ensure that all equipment and employees were clear of the limits before he reported clear to the Dispatcher, and Rule 1.1.2, Alert and Attentive, in that he was not alert and attentive in performing his job duties when he released the wrong track and time authority. It sent him a letter of dismissal, dated October 5, 2011. The Organization contends that

dismissal is harsh and excessive, given Claimant's honesty, his prompt response to correct his mistake immediately, and his acceptance of responsibility for the mistake.

FINDINGS AND OPINION:

The Public Law Board, upon the whole record and all the evidence, finds that the carrier 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 Public Law Board has jurisdiction over the dispute involved herein.

This case demonstrates the importance of considering the specific circumstances surrounding any incident to determine the responsibility that an employee bears when something goes wrong. The Claimant has acknowledged from the beginning of this incident that he violated Rule 6.3 when he mistakenly cleared authority for the track he and Track Inspector Bell were occupying instead of the track he had just left, as he intended. However, he realized his mistake within a few seconds of making it and immediately contacted Dispatch, the other Track Inspector, and his supervisor. As a result of his prompt action, the incident became, in essence, a non-event: no one was injured, no property or equipment was harmed, it does not appear that any trains were authorized to operate on the section of track at issue during the few seconds that it was mistakenly cleared. The Carrier promulgates rules for a reason, to promote not just efficient operations, but safe ones as well. And it is reasonable for the Carrier to expect its employees to comply with its rules. But it is not reasonable to expect humans to be perfect 100% of the time and to impose Draconian penalties when they make simple mistakes that they correct immediately, with no adverse effect on Carrier operations.

Given the circumstances of this case, and Claimant's prompt action immediately to reverse his error, dismissal was an unreasonable penalty. He is subject to serious discipline, however, for having violated a fundamental safety rule. His dismissal shall be reduced to a six-month suspension. He shall be reinstated to his

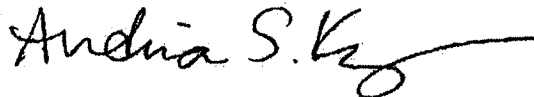
position with seniority, back pay and benefits, but for the six months suspension period.

AWARD

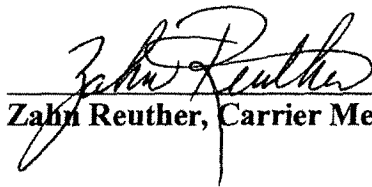
Claim sustained in accordance with the Findings.

ORDER

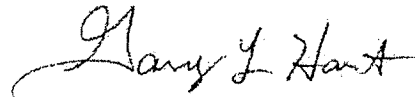
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant be made in accordance with the findings above. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Andria S. Knapp, Neutral Member



Zahn Reuther, Carrier Member



Gary Hart, Organization Member

April 29, 2013

Date