

**PUBLIC LAW BOARD NO. 5850**

---

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY COMPANY**

---

Case No. 504 – Award No. 504 – D. Hunt  
Carrier File No. 14-18-0610  
Organization File No. 2416-BN40NI-18105

---

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We present the following appeal on behalf of Darin Max Hunt (0117127), Seniority Date 03-12- 2006 for the removal of the Claimant's Dismissal. In addition, we request all record of discipline removed from the Claimant's record with seniority rights and entitled benefits restored, including vacation, health insurance benefits and 401(k) contributions with market adjustments if appropriate. The claimant shall be made whole as a result of the Carrier's violation, including the following compensation(s):

1. straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by any outside earnings obtained by the Claimant while wrongfully suspended);

2. any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service, including any and all 401(k) contributions including any market adjustments;

3. overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been removed from service;

4. All notations of the dismissal should be removed from all Carrier records.

## **FINDINGS:**

Public Law Board No. 5850, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant, D. M. Hunt, had been employed by the Carrier since 2012. On October 9, 2018, following an investigation, the Carrier found Claimant guilty of failure to remain within his track authority limits while hy-railing on the Cherokee Subdivision on September 7, 2018, in violation of Maintenance of Way Operating Rules (MWOR) 6.3 Track Occupancy and 11.3 Fouling the Track. The Carrier dismissed him from service.

At the time of the incident, Claimant was a Track Supervisor and was hy-railing eastbound on main track. He had obtained authority between Douglas and West Tiger, as well as on the siding between west siding switch Tiger and east siding switch Tiger.

Roadmaster Sean Baggs was Claimant's supervisor at the relevant time. He stated at the investigation that on the date of the incident Claimant contacted him, at about 12 p.m., and told him he was going from the main line at West Tiger onto the siding, but had released his track and time authority on the siding and was fouling the track without protection. He added that Claimant stated he had backed up to the main track at West Tiger, which was within his limits, and proceeded to set off at the crossing. Claimant exceeded his authority for approximately 13 seconds.

Claimant acknowledged at the investigation that he needed authority to occupy the siding. He admitted releasing that authority while still on the siding. He also acknowledged that the Smart Mobile Client in his vehicle will ask if he is sure in the clear, then issue two follow up questions to ensure that the employee wants to release the authority. He admitted that the computer asked the questions and he answered them. He then received an exceeds alarm.

At the investigation, Claimant maintained that he intended to release his main line authority and the system erroneously released his siding authority instead, but he did not make any such assertion in his statements following the incident and we do not afford it any weight. The Carrier has proven Claimant's guilt by substantial evidence.

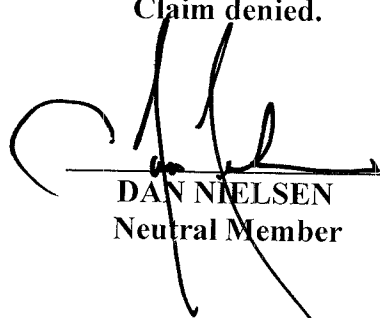
With respect to the penalty, Claimant committed a serious violation, one which could have put employees in jeopardy. The fact that he was able to correct it quickly here is fortunate happenstance, but it does not excuse the violation.

The Carrier's Policy for Employee Performance and Accountability (PEPA) identifies Claimant's current violation as a serious one and this was Claimant's fourth serious violation in a little over six years and his second serious rule violation within an active review period of a prior Level S issued on June 29, 2016. Two of the previous violations involved exceeding his limits.

As the Carrier points out, the PEPA states clearly that employees committing an additional serious rule violation within a review period may be subject to dismissal. This Board has upheld dismissal of employees following a second Level S violation in various awards. See, for example, Case No. 399 (Nielsen). This employee's decision to release his authority was inexplicable, and it was of brief duration. Yet it was a conscious decision, made by an employee with a history of such poor decisions. Given this, we cannot say that the choice of this penalty here represents an unfair, arbitrary or discriminatory exercise of the Carrier's discretion to determine penalties.

**AWARD**

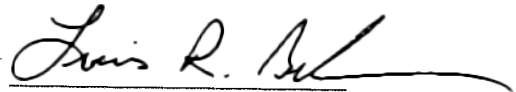
**Claim denied.**



**DAN NIELSEN**  
Neutral Member



**SAMANTHA DAIGLE**  
Carrier Member



**LOUIS R. BELOW**  
Organization Member

**Dated this 9th day of June, 2021.**