

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

vs.

**BNSF RAILWAY COMPANY**

---

Case No. 507 – Award No. 507 – T. Thomas  
Carrier File No. 14-19-0107  
Organization File No. 2421-SL13N1-18139

---

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Troy Thomas (0294769) Seniority date May 05, 2014, for reinstatement with seniority rights restored and all entitlement to and credit for, benefits restored, including vacation, and health insurance benefits. The Claimant shall be made whole for all financial losses as result of the violation, including compensation for: 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. 3) Overtime pay for lost overtime opportunities based on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been suspended. 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly dismissed from service commencing February 01, 2019, continuing forward and/or otherwise made whole. 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, T. Thomas, had been employed by the Carrier since 2014. On December 1, 2019, following an investigation, the Carrier found Claimant guilty of setting on the track outside his limits on November 30, 2018 at approximately 1130 hours on the Galveston Subdivision. The Carrier dismissed him from service.

At the relevant time, Claimant was a Special Equipment Operator (SEO) headquartered in Alvin, Texas. On November 30, 2018, Claimant was working under Track Supervisor Hope's track authority on Main Track 2 between the Southbound Control Signal, Alvin Crossovers - Switch Yes and the Northbound Control Signal, Algoa Crossovers - Switch Yes. He was using the authority to set on track and pick up ties.

While Claimant therefore had track and time authority on Main Track 2, he set his machine on Main Track 1, where he had no authority. His machine sounded an exceeds alarm, and Claimant called his supervisor, Roadmaster Lelak, and told him he had set his machine on the wrong track, without authority.

Claimant explained at the investigation that his assignment on the day at issue was to clean up track ties. He stated that he "set on the wrong track" and then got off. He acknowledged that the Track Supervisor, whose authority he was operating under, had protection on Main 2 but he set on Main 1. He admitted that there was no protection on that track. When he realized his mistake, he immediately set off that track and contacted Mr. Lelak.

Claimant's personal record shows a reprimand in 2016 for failure to determine power line voltage to maintain minimum clearance, and a 30-day Level S record suspension, with a 36-month review period, assessed on June 29, 2017 for failing to provide proper track protection.

The Organization notes that Claimant set on, then immediately sat off, the tracks. He was at no time in danger, as he did not travel on the tracks but merely pulled up on a road crossing and then immediately pulled back off into the clear. He was honest and forthright about his mistake.

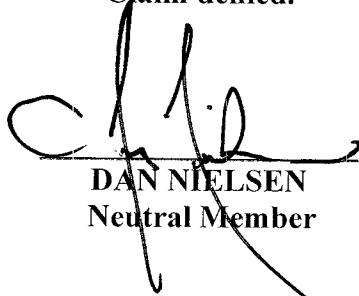
We have carefully reviewed the record in its entirety. First, we find no evidence of any procedural irregularity or unfairness in the conduct of the hearing. On the merits, Claimant admitted his violation, and it is well settled that such an admission is sufficient to satisfy the Carrier's burden of proof.

With respect to the penalty, the Organization argues that dismissal is an extreme and unwarranted penalty, but we cannot agree. Claimant committed a serious violation which could have had devastating consequences. The instant violation occurred while Claimant was still within the 36-month review period for another incident in which he failed to provide proper track protection, and the PEPA provides for dismissal for a second Level S offense within a 36-month review period.

As this Board noted in Case No. 399, dismissal is not extreme when, as here, the claimant was a short-term employee who already had a similar serious offense on his record. Given this employee's short service and prior record, we reach the same conclusion here and see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

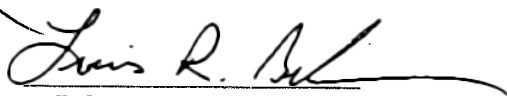
Claim denied.



DAN NIELSEN  
Neutral Member



SAMANTHA DAIGLE  
Carrier Member



LOUIS R. BELOW  
Organization Member

Dated this 9th day of June, 2021.