

**PUBLIC LAW BOARD NO. 5850**

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**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**vs.**

**BNSF RAILWAY COMPANY**

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Case No. 513 – Award No. 513 – J. Landers

Carrier File No. 14-19-0106

Organization File No. 2411-SL13S1-18125

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Carrier file # RDV-MOW-2018-02331, Jeremy Landers (1670116) Seniority date August 22, 2005, for with removal of Level S, Actual Suspension from February 05, 2019, through March 06, 2019, in addition to a Three (3) year review period, 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 withheld from service commencing February 05, 2019 through March 06, 2019 and/or otherwise made whole. All notations of the discipline 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, J. Landers, has been employed by the Carrier since 2005. On February 4, 2019, following an investigation, the Carrier found Claimant guilty of failure, when receiving an authority behind a train, to verify that the train had passed his location before occupying the main track on December 7, 2018 at approximately 1330 hours on the Conroe Subdivision. The Carrier assessed him a 30-day actual suspension with a three-year review period.

At the relevant time, Claimant was working as a track supervisor on gang TINS1313, headquartered in Plantersville, Texas. Claimant explained at the investigation that on December 7, 2018, he had a track warrant to the west switch at Honea. He stated that he pulled up there and set off, and the dispatcher told him to get out of the way for traffic. He sat there, waiting on a train, and had several phone calls. He saw a train go by.

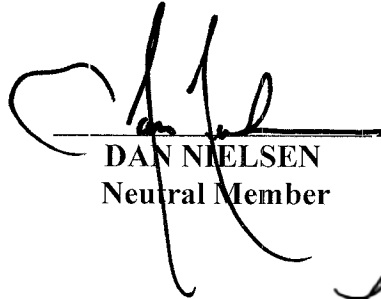
Claimant stated that he then got his track warrant behind the BNSF 5210. He admitted at the investigation that he failed to verify that this train had passed his location before occupying main track, in violation of Maintenance of Way Operating Rule (MOWOR) 6.2. This admission is sufficient to satisfy the Carrier's burden of proof.

Claimant's personal record shows a Level S record suspension, with a 12-month review period, assessed on February 23, 2018, for exceeding the limits of authority and failing to truthfully disclose all events concerning the incident to the dispatcher. He had two earlier operating violations, in 2010 and 2011.

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, the record demonstrates that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. We see no reason to disturb the penalty deemed appropriate by the Carrier.

AWARD

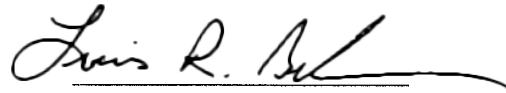
Claim denied.



DAN NIELSEN  
Neutral Member



SAMANTHA DAIGLE  
Carrier Member



LOUIS R. BELOW  
Organization Member

Dated this 9th day of June, 2021.