

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 539 – Award No. 539 – A. Edwards
Carrier File No. 14-19-0385
Organization File No. 2409-SL13C5-1938

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Carrier file# RDV-MOW-2019-01556, Andre Edwards (1754654) Seniority date August 20, 2007, 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 September 30, 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, A. Edwards, had been employed by the Carrier since 2007. On September 30, 2019, following an investigation, the Carrier found Claimant guilty of exceeding the limits of his authority while operating rail detector HRZ189 near Milepost 365 on the Fort Worth Subdivision on August 20, 2019. The Carrier determined that Claimant had violated Maintenance of Way Operating Rules (MOWOR) 1.6 Conduct and 6.3.1 Track Authorization and dismissed him from service.

At all times relevant, Claimant was working as a Foreman on a gang out of Fort Worth, Texas. On August 20, 2019, Claimant piloted the Hertzog 189 rail detector on the Fort Worth Subdivision with contractors Jason Payne and Brian Ingram. Claimant received track authority on Main 2 between Northbound Control Signal (NBCS) North Alliance and Southbound Control Signal (SBCS) Beth (170-53), and on Main 1 between NBCS Beth and SBCS Beth (170-52).

Fort Worth West Roadmaster Sean De Baun testified at the investigation that on August 20, 2019, Division Engineer Justin Devine called him about a possible out-of-limits issue and requested that he report to Alliance Yard. Mr. De Baun testified that Claimant had been granted authority on Main 2 between the NBCS North Alliance and SBCS Beth, which is north of North Alliance. Claimant also had authority on the Main 1 Track between the NBCS Beth and SBCS Beth. Mr. De Baun provided a diagram of the relevant track signals, highlighted to show where Claimant had track authority from North Alliance at Milepost 365.6 on Main 2, through the crossover to Main 1, and up to the SBCS at the far north end of Beth, which is approximately Milepost 364.9. He also provided the vehicle's HLCS alarm history for August 20, 2019, which shows GPS pings as the vehicle rolled past 364.95 and proceeded as far as Milepost 365.006. He explained that Milepost 365 is approximately 80 to 100 feet north of SBCS Beth.

When he arrived at the location at issue, Mr. De Baun stated, he asked Claimant, Mr. Payne, and Mr. Ingram to provide written statements, which Mr. De Baun entered as exhibits at the investigation. Mr. De Baun explained that Claimant denied going past SBCS Beth and maintained that the exceeds alarm sounded because he was late switching the thumb wheel from Main 2 to Main 1. Mr. De Baun testified that both Mr. Payne and Mr. Ingram told him they went past SBCS Beth.

In his written statement dated August 20, 2019, Mr. Payne, the driver of the Hertzog truck, stated:

We were sitting at the signal on Main 2 at NBCS N Alliance. Andre Edwards got time to sit there while we waited on 4 train to make moves and switch the Time was 170-52 N Switch Alliance Switch No to S Switch Alliance Switch No. We sat until the dispatcher said to go to Beth on Main 2 and switch over to Main one go around the train and set back on behind the train cause it would be an hour before the train moved. Andre Edwards got time 170-53 granted on Main 2 NBCS N Alliance Switch Yes to SBCS Beth Switch Yes and granted on Main 1 NBSC Beth Yes to SBSC Beth Yes until 1400. We proceeded from North Alliance heading North toward Beth went to point of the switch picked up the carriage and by railed thru the crossover @ Beth switching from Main 2 to Main 1[.] I was telling Andre to make sure he rolled the thumb wheel as we crossed over so we would be on M1

for the HLCS[.] I was watching as we rolled past the signal on N Beth went to the mile past at 365 saw we went red and the pilot had us back up back into the O.S. and it turned green again and the dispatcher called us and told us to hang tight there while they looked at it then told us to go to [L]ambert and set off.

Mr. Ingram, the Hertzog equipment operator who was sitting at the back of the truck, also provided a written statement, dated August 20, 2019:

Test North on Main 2 train was parked in front of us was going to crossover to Main 1 and travel passed the train and cross back over to Main 2 and continue testing north. When we got pass the North Signal at Beth the HLCS light turned red. The Authority was 170-53 NBCS N Alliance S. Y to SBCS S Alliance S. Y Main 2 NBCS Beth S. Y SBCS Beth S. Y Main 1.

Neither Mr. Payne nor Mr. Ingram testified at the investigation.

Fort Worth Roadmaster Mark Russell testified that the Texas Chief Dispatcher contacted him about Claimant exceeding his limits. He explained that the HLCS team stated that Claimant was outside his limits by about 145 feet. Mr. Russell testified that he did not speak with Mr. Payne or Mr. Ingram but he did speak with Claimant, who maintained that it was a thumb wheel error that set off the alarm. Mr. Russell explained that the thumb wheel is a selector on the HLCS box in the hy-rail vehicle that shows the track the vehicle is operating on, to assist with GPS tracking, and that thumb wheel errors are "fairly common, but pretty rare". He added that the Texas Chief Dispatcher got back to him and confirmed that Claimant had exceeded his limits, outside of the OS at Beth.

Claimant's written statement, dated August 20, 2019, provided:

The dispatcher granted us track and time on Main 2 and the crossover to Main 1, switch yes. As we crossed over, I had a timing issue with the thumb wheel. We got to Main 1 and stopped near the signals. The alarm went to red and we stopped the truck and I explained it to the dispatcher. Then DS gave us more time to travel and set off. We understand the authority and did not go out of our limits.

At the investigation, Claimant testified that that he was the pilot on the Hertzog rail detector on August 20, 2019. He did not dispute that his track authorities on that day extended only to SBCS Beth, and that Milepost 365.006 was beyond that location. He testified that the men pulled up to SBCS Beth and stopped. He maintained that Mr. Payne's statement that they went to Milepost 365, saw it go red, and then backed up until it turned green was incorrect. Claimant further testified that Mr. Ingram, whose statement was similar to Mr. Payne's, was in the back of the vehicle, had no view of what happened, and simply made his statement based on what Mr. Payne told him.

Claimant also asserted at the hearing that the alarm history indicating they went to Milepost 365.006 is incorrect. He testified that the alarm history shows that on Authority 170-53, the alarm went off when the vehicle was close to the end of the limit. It does not show, he maintained, that

Claimant exceeded his limits on Authority 170-53, only that he exceeded his limits on 170-52. Claimant denied passing SBCS Beth, explaining that they only passed NBCS Beth, which they had authority to do, when they crossed over from Main 2 to Main 1. He testified that after they crossed over, they approached SBCS Beth and he told Mr. Payne to slow down, stop, and back up because he did not want to get too close.

Claimant also explained that even though he had authority on both tracks, an error can still occur if the thumb wheel is on Main 2 and the truck is on Main 1, or vice versa. Claimant explained that when crossing from one track to the next, one must precisely switch the thumb wheel from one track to the other at the same time as the crossover; failure to do so triggers the HLCS alarm. He explained that when the alarm goes off because of a thumb wheel error, that does not mean that the vehicle has exceeded the track authority limits, it simply means that the thumb wheel was not switched from one track to the other at the precise location. The precise location, he further testified, is not defined on the tracks; even though the thumb wheel is typically flipped when traveling through the crossover, one must guess the right moment to switch it. Claimant testified that he did not flip the thumb wheel at the precise time.

Claimant previously received a Level-S 30-day Record Suspension with a one-year review period on July 6, 2016, and a Level-S 30-day Record Suspension with a three-year review period on June 13, 2018, for using a handheld electronic device while operating a Company vehicle. On March 27, 2019, Claimant received a Level S 30-day Actual Suspension with a three-year review period for his unauthorized use of a Company vehicle for personal use.

The Carrier argues that it has met its burden of proving Claimant's guilt by substantial evidence. The validity of Claimant's track authorities on August 20, 2019, is undisputed. Indeed, Claimant admitted that his track authority ended at Milepost 364.9, and Milepost 365.006 was not covered by either of his track authorities. Both the HLCS data and the two event witnesses indicate that Claimant exceeded his limits by traveling to Milepost 365.006. This is substantial evidence of Claimant's guilt, not refuted by his contention that he simply made a thumbwheel mistake which caused false readings. His guilt has been proven on this record.

As for the penalty, the Carrier states that the fact that the incident did not result in a catastrophe does not reduce the seriousness of Claimant's violation, as occupying track without authority creates a serious risk of injury or death. Additionally, this was Claimant's third serious violation in an active review period, and, pursuant to the Carrier's Policy for Employee Performance Accountability (PEPA), he was subject to dismissal. There is no reason to overturn the Carrier's action.

The Organization asserts that the Carrier failed to present any evidence that Claimant exceeded his track authority limits or violated MOWOR 1.6 or 6.3.1. Neither of the Carrier witnesses who testified at the investigation was present at the time of the incident and testified solely based on what they were told by the contractors. Notably, the contractors' statements were unclear and neither contractor was present at the hearing to be cross-examined.

The Organization further contends that Claimant's testimony that the HLCS alarm went off due to a thumb wheel error was clear and consistent, and the Carrier's own witness confirmed

that such errors are fairly common. Claimant explained they had an authority that allowed them to enter a crossover location, and they crossed from Main 2 to Main 1 inside their authority limits. While crossing over, Claimant did not switch the thumb wheel at the exact time the GPS recognized the crossover, so it falsely indicated that Claimant was outside his limits and triggered the HLCS alarm. Indeed, the Organization stresses, Mr. Russell testified that this happens often while transferring from one main track to another. His testimony confirms that a thumb wheel error in this case is possible. As such, the Carrier has failed to meet its burden of proof and Claimant should be reinstated and made whole.

We have carefully reviewed the record in its entirety and find that the Carrier has met its burden of proving Claimant's guilt by substantial evidence. Although Claimant repeatedly denied exceeding his limits and maintained that the alarm went off because of his failure to properly time his thumb wheel switch, no evidence corroborates that explanation. Both the GPS data and two eyewitnesses confirmed that the vehicle exceeded its limits, at a location Claimant admitted was outside either of his track authorities. While a Carrier witness did testify that thumb wheel errors occur, that does not prove that such a mistake happened here. Resolving credibility disputes, such as those presented here, is the responsibility of the Hearing Officer, and the record fully supports the conclusion that Claimant's explanation was not credible. His guilt has been proven by substantial evidence.

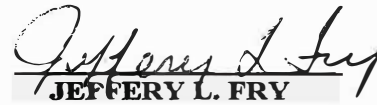
As for the penalty, exceeding limits is a serious violation, as it can result in catastrophic consequences. In addition, this was Claimant's third serious violation within an active review period, and, as the Carrier states, its PEPA subjected him to dismissal. We cannot say that the Carrier's determination that this was the appropriate penalty represents an unfair, arbitrary or discriminatory exercise of its discretion to determine the level of discipline.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member

LOGAN MCKENNA
Carrier Member

JEFFERY L. FRY
Organization Member

Dated this 31 day of August, 2023.