

PUBLIC LAW BOARD NO. 5850

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

BNSF RAILWAY COMPANY

Case No. 546 – Award No. 546 – J. Landers
Carrier File No. 14-20-0163
Organization File No. 2411-SL13N1-19106

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf of Jeremy Landers (1670116) Seniority date August 22, 2005 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 April 07, 2020, 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, J. Landers, had been employed by the Carrier since 2005. On April 7, 2020, following an investigation, the Carrier determined that Claimant exceeded the limits of his authority near Milepost 52.365 on the Conroe Subdivision on December 16, 2019. The Carrier found that Claimant had violated Maintenance of Way Operating Rules (MOWOR) 6.3.1 Track Authorization and 10.3 Track and Time, and dismissed him from service.

At all times relevant, Claimant was working as a Track Supervisor on the Conroe Subdivision under the supervision of Roadmaster James Toler. Claimant had track and time authority on the main track between the Westbound Control Signal East Wye and the Eastbound Control Signal Control Point 492, but not between East Price and West Price. Claimant was inspecting track for another track supervisor, and, he stated at the investigation, it was his first day substituting on that territory.

Mr. Toler testified at the investigation that on December 16, 2019, he received a call from Claimant, who explained his Hyrail Limits Compliance System (HLCS) alarm was showing that he exceeded his track authority. He added that Claimant told him he was at East Siding Switch Price on the Conroe Subdivision, and that he had backed up, set off the crossing, and contacted the dispatcher. The Carrier's HLCS records show that Claimant was outside his limits for about three minutes.

Claimant testified at the investigation that he was hy-railing westbound from Conroe and his HLCS alarm went off at East Price. He stated he backed up, checked that the HLCS was not malfunctioning, set off the track, and called Roadmaster Toler. Claimant acknowledged that he did not have authority on that track segment, just right up to it and then on the other side, but stated that he did not intend to exceed his limits. Claimant maintained that he only traveled about 100 feet into the segment, and was in no danger since he had track authority on both sides of the segment and had no intent to go beyond the signal at Price.

Claimant previously received a Level-S 30-day Record Suspension with a three-year review period on January 13, 2010 for exceeding the maximum authorized speed while operating a hy-rail vehicle. On May 26, 2011, Claimant received a Formal Reprimand with a one-year review period for failing to detect, correct, and protect the track, resulting in a derailment. On February 23, 2018, Claimant received a Level-S 30-day Record Suspension with a one-year review period for exceeding the limits of his authority and not accurately disclosing the incident to the dispatcher. Claimant then received a Level-S 30-day Actual Suspension with a three-year review period on February 4, 2019 for failing to verify that the train had passed his location before occupying the main track. On November 20, 2019, Claimant received a Formal Reprimand with a one-year review period for failing to ensure that a track segment had the minimum number of crossties.

The Carrier notes that Claimant admitted he exceeded his track limits on the day in question, in violation of the applicable Carrier Rules, and this admission is sufficient to satisfy its burden of proving his guilt by substantial evidence. The Carrier asserts that the Organization's contentions that Claimant simply made a mistake and only slightly exceeded his limits do not absolve Claimant of his failure to abide by the Carrier's Rules, nor does Claimant's remorse.

With respect to the penalty, the Carrier points out that Claimant was in an active review period for a previous offense, and had, in 2018 and 2019, been disciplined for track violations like the one at issue. The Carrier's determination that dismissal was appropriate was not arbitrary or excessive, and should not be disturbed by this Board. The Carrier therefore urges that the claim be denied.

The Organization argues that Claimant simply made a mistake, and at no point did he act maliciously or intend to be dishonest with the Carrier. This was Claimant's first day covering someone else's territory and responsibilities. The Organization contends that because he had track authority on both sides of the track section, there was no potential danger because no one else was approaching on the other side of the section. Further, Claimant immediately set off the track and contacted his Roadmaster once he was alerted that he exceeded his track authority. The Organization contends that as the Carrier has failed to prove any intent to violate Carrier Rules, Claimant's dismissal was excessive and unjustified, and he should be reinstated and made whole.

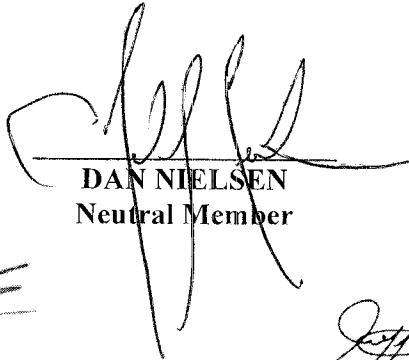
We have carefully reviewed the record in its entirety. As the Carrier states, Claimant admitted that he exceeded his authority limits, a clear violation of Carrier Rules, and that admission is sufficient to meet the Carrier's burden of proving his guilt by substantial evidence. The fact that he had authority on either side of the location at issue is irrelevant, as is the Organization's argument that Claimant should be excused because it was his first day on this territory, which he was covering for another employee. Claimant was an experienced employee and should have been aware of his limits. His violation has been established by substantial evidence.

With respect to the penalty, Claimant was a longtime employee and dismissal is the ultimate penalty. However, traveling outside one's limits is a very serious violation which can put employee's lives at risk. That it did not do so here is fortunate but does not excuse Claimant's actions. The Organization's arguments are essentially a request for leniency, which, it is well established, is the province of the Carrier, not this Board.

Claimant had a history of similar violations, with this marking his third serious violation in less than three years and the second specifically involving exceeding his track limits. This violation also occurred within an active review period for discipline issued on February 4, 2019. Under these circumstances, we cannot say that the Carrier's decision to dismiss Claimant was an arbitrary or excessive exercise of its discretion to determine the appropriate penalty.

AWARD

Claim denied.



DAN NIELSEN
Neutral Member



LOGAN MCKENNA
Carrier Member



JEFFERY L. FRY
Organization Member

03/24/2025

Dated this 24 day of March , 2025.