

**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. 549 – Award No. 549 – P. Hill  
Carrier File No. 14-20-0135  
Organization File No. 2411-SL13N1-210

**STATEMENT OF CLAIM:**

Claim of the System Committee of the Brotherhood that:

We present the following claim on behalf Carrier File # RDV-MOW-2020-00178, Phealbrick Hill (3104569), Seniority date July 08, 2019, for the removal of the Claimant's Level S 30 Day Record Suspension with a Three (3) Year Review Period. In addition, we request all record of discipline be removed from the Claimant's record. The Claimant shall be made whole as a result of the Carrier's violation.

**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, P. Hill, had been employed by the Carrier since 2019.<sup>1</sup> On March 18, 2020, following an investigation, the Carrier determined that Claimant exceeded the limits of his authority while fouling the main track near Milepost 288.7 on the Fort Worth Subdivision on January 21, 2020. Claimant did not attend the investigation. The Carrier found that Claimant had violated Maintenance of Way Operating Rules (MOWOR) 6.3.1 Track Authorization and 11.3 Fouling the Track and assessed him a Level-S 30-day Record Suspension with a three-year review period.

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<sup>1</sup> Claimant's Employment History indicates he resigned on April 7, 2020.

At all times relevant, Claimant was working as a Welder on mobile gang TRWX2541. Paul Clayborn, Roadmaster for Fort Worth South, testified that on January 21, 2020, he was notified that Welder and Employee in Charge Bobby Flood received an exceeds alarm and that Mr. Flood told the dispatcher his crew had not set on the rail. Mr. Clayborn called Mr. Flood, who explained they got to a crossing and their HLCS gave them an exceeds alarm, but they never set onto the tracks. Mr. Clayborn then contacted Operations Manager Rush Williams, who investigated the incident and determined that the HLCS functioned as intended by preventing the gang from hy-railing the vehicle onto the tracks.

Mr. Clayborn further testified that the gang had main track authority between NSS Morgan (SW-N) at Milepost 288.8 and SSS Kopperl (SW-N) at Milepost 292.8, but they attempted to set on the track at a crossing at Milepost 288. In doing so, they fouled the track at FM Road 927. He noted that under MOWOR 6.3.1, Mr. Flood should have briefed with the dispatcher and identified where he planned to set on but likely did not know or notice he would be setting on outside his limits. Mr. Clayborn introduced an HLCS Report showing an exceeds alarm for the gang's vehicle from 6:02:13 to 6:02:28, as well as written statements provided by all five employees present at the time of the incident, each of whom explained that after they pulled up to the crossing, they realized it was the wrong authority and pulled off the crossing.

Shane Pendergraft, Manager of Engineering Certification for the Red River Division, was at the jobsite after the incident for a facility assessment. He testified that Mr. Flood told him they were on the track for 42 seconds, that they were physically on the track, and that he had been lowering the hy-rail gear to traverse the rail, and that he received an exceeds alarm. All five employees gave identical handwritten statements indicating that they had received authority, pulled up to the crossing realized they had the wrong authority, and pulled off.

The three employees present at the investigation—Robert Quinones, Kendrick Stevenson, and Mr. Flood—testified, consistent with their previous written statements, that they got track authority and, as they approached the crossing to set on, they received an exceeds alarm. When Mr. Quinones notified Mr. Flood of the alarm, Mr. Flood told him to pull away and he did. Each also testified that merely crossing the track would be considered fouling, that they were not on the crossing long, but they did not set onto the track. Additionally, Mr. Flood denied that the hy-rail gear was lowered. Mr. Quinones added that because they had people on the track on either side of them, they were not technically fouling the track under the Rule.

Mr. Flood testified that they pulled up to the crossing, the alarm went off, and he told Mr. Quinones to pull off the track and get out of the way. He pointed out that the HLCS Report showed that the vehicle was only on the track for 15 seconds, which represented when they received the HLCS alarm and immediately pulled off the track.

Mr. Flood acknowledged that the location at which they attempted to set on was not within his limits that day; he did not explain how or why he attempted to set on track there. He acknowledged that they were foul of the track, but stated that he never set on or put the hy-rails down on the track.

Mr. Flood stated that the HLCS was a “safety overlay,” which worked as intended and prevented him from making a mistake that day.

Claimant had no previous disciplinary record.

The Carrier asserts that it met its burden of proving that Claimant violated MOWOR 11.3 and 6.3.1 when he and his fellow employees, all of whom are in safety-critical roles, attempted to occupy the track outside of their authorized limits, as those who testified at the hearing acknowledged. The Carrier notes Mr. Clayborn’s testimony that Mr. Flood “should’ve had [a job safety] briefing with the Dispatcher and should’ve identified where he was . . . going to . . . set on[.]” This failure could have led to catastrophic results.

The Carrier further asserts that Claimant admitted guilt when he acknowledged operating the vehicle up to the crossing, outside of the gang’s authority. This admission alone, the Carrier states, is sufficient to satisfy its burden of proof.

With respect to the penalty, the Carrier maintains that Claimant’s violation was extremely serious and occurred during the active review period for an earlier serious violation. Under the Carrier’s Policy for Employee Performance Accountability (PEPA), he was subject to discharge. The Carrier’s decision was not arbitrary, excessive or extreme, as the Organization argues, and should not be disturbed by the Board.

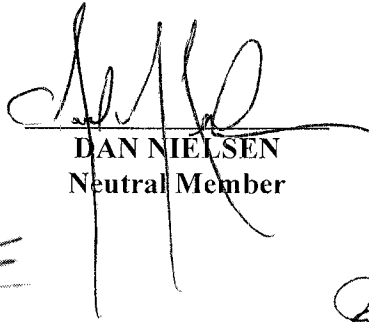
This is one of four claims before this Board regarding the same incident. We have reviewed the record in its entirety, and find that the Carrier has met its burden of proving Claimant’s guilt by substantial evidence. It is not disputed that Claimant intended to set the vehicle on track where there was no authority to do so. Neither Claimant nor any of the other crew members gave any explanation for this. There is no evidence there was a job briefing with the dispatcher or among the crew members, who were apparently unaware of the location of their track authority that day.

Claimant indeed fouled the track, as he and the crew members who appeared at the hearing admitted. It is the responsibility of all crew members to ensure that they work safely. It is true that they only fouled the track for 15 seconds and pulled off immediately, and this somewhat mitigates their offense. It bears noting, though, that they pulled off immediately only because the HLCS sounded the alarm. It did work as intended, but the existence of that safety feature does not absolve employees of their responsibility to work safely, as this crew obviously did not. Claimant’s guilt has been proven by substantial evidence.

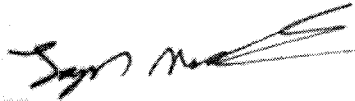
We cannot say that the Carrier’s choice of a Level S 30 Day Record Suspension with a Three (3) Year Review Period exceeded its discretion to determine the appropriate penalty, as this was a serious incident and the penalty was assessed in accordance with the Carrier’s Policy for Employee Performance Accountability (PEPA).

AWARD

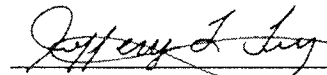
Claim denied.



DAN NIELSEN  
Neutral Member



LOGAN MCKENNA  
Carrier Member



JEFFERY L. FRY 03/24/2025  
Organization Member

Dated this \_\_24\_\_ day of March , 2025.