

**NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 7048  
AWARD NO. 210, (Case No. 210)**

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION – IBT RAIL CONFERENCE**

**vs**

**BNSF RAILWAY COMPANY**

**“Claim of the System Committee of the Brotherhood that:**

- 1. The Carrier violated the Agreement commencing June 10, 2016, when Claimant, Milton Mendenhall (1701572), was given a Standard Formal Reprimand one year review period for failure to have HLCS activated on a subdivision where HLCS is in effect while on the LaJunta Subdivision. The Carrier alleged violation of Maintenance Operating Rule 6.50.5 – Hy-Rail Limits Compliance System (HLCS).**
- 2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant’s record this discipline with all rights unimpaired and pay for all wage loss including overtime commencing April 12, 2016, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”  
(Carrier File No. 14-16-0290) (Organization File No. 204-SL13N1-1656)**

**FINDINGS:**

Public Law Board No. 7048, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and that the Board has jurisdiction over the dispute herein; and that the parties to the dispute have participated in accordance to the Agreement that established the Board.

The facts indicate that on April 12, 2016, Claimant was working as a Welding Foreman and it was alleged that the Claimant may have failed to have HLCS activated in an area where HLCS was in effect and because of that allegation the Claimant was directed to attend a formal Investigation on April 27, 2016, which was mutually postponed until May 20, 2016, concerning in pertinent part the following charge:

**“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to have HLCS activated on a subdivision where**

**HLCS is in effect, LaJunta Subdivision, between 0901 and 1126 hours on April 12, 2016, while assigned as Welding Foreman.**

**This investigation will determine possible violation of MWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS)."**

On June 10, 2016, the Claimant was notified that he had been found guilty as charged and was assessed a Formal Reprimand with a One Year Review Period.

It is the position of the Organization that the Claimant testified that he checks his HLCS unit daily and on the date in question he had activated the unit and it appeared to be functioning properly. Claimant further stated that at times the unit did not always function correctly and he reported such to the Dispatcher. The Organization argued that the record shows that some HLCS units had to be recalled because they did not function properly and Claimant's unit was a used unit that might have been part of that group of HLCS units that had problems. It couldn't be sure because the prior number had been whited out. It further argued that in the area the Claimant was working other employees had experienced "dead spot" problems wherein their HLCS units failed to work properly. The Organization also offered several statements from co-workers and Supervisors that attested to the Claimant's strong work ethic and integrity. The Organization concluded that the Claimant had fulfilled his duties and the Carrier had not met its burden of proof. It requested the discipline be rescinded and the claim be sustained as presented.

It is the Carrier's position that the record shows that HLCS is a system designed as a safety overlay to protect employees. The system uses global positioning systems to verify the locations of HLCS equipped vehicles in relation to their authorities. The HLCS is designed to give visual and audible warnings to the holder of an authority if they are near or outside their limits of authority. It argued the Claimant's Assistant Roadmaster, T. Highfield, testified that Claimant was one of four vehicles on the track on April 12<sup>th</sup>, and Claimant's vehicle was the only vehicle that had an activation failure on his HLCS system, therefore, it reasoned the Claimant failed to have it turned on. Lastly, it asserted the record is clear that the Claimant was guilty as charged and the discipline was lenient and appropriate. It asked that the discipline not be disturbed and the claim remain denied.

The Board has thoroughly reviewed the transcript and record of evidence and it is determined the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

Claimant testified that he activated the HLCS unit in his vehicle on April 12<sup>th</sup>. On page 17 of the transcript, Mr. Steve Snider, Grinder on RWO5, who was assigned to work with the

Claimant on the aforementioned date was asked about whether or not the HLCS was activated. He stated the following:

**“STEVE SNIDER: Whenever I was in, in the vehicle, uh I always looked down and noticed that the thumbwheel was on M and the green light was on, so.**

**PHILIP DODSON: Okay, and that’s an everyday type thing that you, that you that with?**

**STEVE SNIDER: Yeah.**

On page 18, the questioning of Mr. Snider continued as follows:

**VERNON VANAUSDELL: Uh, Mr. Snider, you stated that you were working with Mr. Mendenhall that day. Is it customary for, uh, Mr. Mendenhall and whomever is working within the truck to have a briefing and everybody confirm HLCS is in operation, correct condition and positions and everything’s been tested.**

**STEVE SNIDER: Mm-hmm. I, I don’t run around with him all the time, but that day I just happened to be.**

**VERNON VANAUSDELL: Okay, and the truck tested fine? HLCS was on, green light was on, position was in the M?**

**STEVE SNIDER: Yes.” (Underlining Board’s emphasis)**

The Carrier argued that the Event Log showed that the Claimant had not activated his HLCS whereas Claimant stated that he had which was confirmed by Witness Snider. Additionally, it was not disputed that other employees who had worked in the same area had experienced that location as being a “dead spot”. Lastly, it was shown that some HLCS units had experienced problems and had to be recalled. Claimant’s unit was used and might have been one of those units that should have been recalled. The Board has determined that the Carrier did not meet its burden of proof, therefore, the Board finds and holds the discipline is set aside and the claim is sustained as presented.

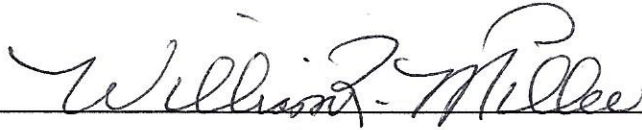
P.L.B. No. 7048

Award No. 210, Case No. 210

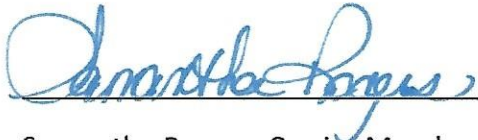
Page 4

**AWARD**

Claim sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman and Neutral Member



Samantha Rogers, Carrier Member



David R. Scoville, Employee Member

Award Date: 1/5/18