

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 359, (Case No. 359)**

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

vs

BNSF RAILWAY COMPANY

William R. Miller, Chairman & Neutral Member
Michelle McBride, Carrier Member
Louis R. Below, Employee Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Carrier violated the Agreement commencing August 7, 2020, when Claimant Arturo D. Ventura (6551915) was assessed a Level S 30 Day Record Suspension for failure to adhere to MWOR 6.3.1 Track Authority on May 10, 2020, while working as a Track Supervisor on the Bakersfield Subdivision.**
- 2. As a consequence of the violation referred to in part 1, the Carrier shall remove this discipline with all rights unimpaired and pay for all wage loss including overtime (if applicable) commencing August 7, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0292) (Organization File No. 2419-SL13N1-2060)**

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 Claimant was assigned as Track Supervisor on May 10, 2020, was hrrailing on the Bakersfield Subdivision when Claimant allegedly exceeded the track limits of his authority and because of that Claimant was directed to attend a formal Investigation on May 22, 2020, which was mutually postponed until July 21, 2020, concerning in pertinent part the following:

“...for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to adhere to MWOR 6.3.1 Track Authority on May 10th, 2020 at approximately 1610 hours while working as a Track Supervisor near MP 967.0 while operating BNSF vehicle 30586 on the Bakersfield Subdivision. As a result you occupied a segment of track without proper authority.”

On August 7, 2020, Claimant was notified that he had been found guilty as charged and was assessed a Level S 30 Day Record Suspension with a One Year Review Period.

It is the Organization's position that after Claimant exceeded his Track Authority Claimant immediately stopped his vehicle, notified the Train Dispatcher and Roadmaster Stroup of the incident and complied with all instructions. It argued that the following day May 11th Claimant contacted Telecom Department and explained that the HLCS System that was supposed to prevent violations of MWOR 6.3.1 from occurring never warned Claimant that he was nearing the end of his limits which Telecom said might be the result of satellites alignment. It suggested that if the HLCS System on the Claimant's vehicle had functioned properly the incident would never have transpired. The Organization further asserted that the Claimant had served as a Track Supervisor for 16 years with a clear record and Claimant's immediate Supervisor/Roadmaster, S. Stroup, testified Claimant is a good employee that he has never had any issues with. It further argued that if the Carrier had proven its charges (which it didn't) the Claimant should have been granted Risk Reduction Education. It concluded by requesting that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the evidence and testimony substantiates that Claimant violated MWOR 6.3.1. It argued that Roadmaster Stroup investigated the incident and obtained a statement from Claimant. In that statement Claimant admitted he did not have authority to enter East Shirley and Mingo and further admitted such during his testimony at the Investigation, therefore, it was clear that the Carrier had proven its case. It further argued that based upon the specific circumstances of this case Claimant was granted leniency in its assessment of discipline and 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 that the Investigation and appeal process met the guidelines of Rule 13(a) and Appendix No. 11.

There is no dispute between the parties and Claimant that Claimant exceeded his Track Authority on May 10, 2020. Claimant admitted such in his written statement of May 10th and on Pages 12 and 13 of the Transcript Claimant testified that he misread the screen that resulted in

Claimant exceeding his Track Authority. Assuming for the sake of argument that the HLCS System did not immediately alert the Claimant does not excuse Claimant's failure to comply with the Rules because Claimant testified he was fully aware of the area and the authority that he requested and clearly stated he didn't read his screen correctly for operational Authority. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof and Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the offense Claimant had approximately 25 years of service with a good work record. However, failure to pay close attention to Track and Time Authority is a serious matter and can have catastrophic consequences, fortunately nothing happened in this instance. The discipline assessed was corrective in nature and in accordance with the Carrier's Policy for Employee Performance Accountability (PEPA) the discipline was appropriate and will not be disturbed and the claim will remain denied because it was not contrary to PEPA, nor was it arbitrary, excessive or capricious.

AWARD

Claim denied.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: March 25, 2022