

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 7048
AWARD NO. 373, (Case No. 373)**

**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 December 4, 2020, when Claimant Chris D. Vega 1509116) was dismissed for occupying main track without proper authority near CP 87 on the Emporia Subdivision at approximately 1030 hours on October 21, 2020, while working as Track Supervisor in violation of MWOR 6.3.1.**
- 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 December 4, 2020, continuing forward and/or otherwise made whole.**
- 3. This claim was discussed in conference between the parties.”
(Carrier File No. 14-20-0394) (Organization File No. 2404-SL13N1-20113)**

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 October 21, 2020, Claimant was performing track inspections over the Emporia Subdivision in a Carrier hy-rail truck while traversing on the rail. Claimant was initially granted authority to operate his Carrier vehicle on track between Crossover Morris and Control Point (CP) 87 under Authority # 17-17. Subsequently, Claimant was granted authority to operate between Main 4 at CP87 to CP 72 under Authority # 17-22. It was alleged that under

Track Authority # 17-22, Claimant should have crossed over on Main 4 and erred when he crossed over to Main 3 and because of that Claimant was directed to attend a formal Investigation on November 3, 2020, which was mutually postponed until November 10, 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 occupying main track without proper authority near CP 87 on the Emporia Subdivision at approximately 1030 hours on October 21, 2020, while working as track supervisor.

This investigation will determine possible violation of MWOR 6.3.1 Track Authorization.”

On December 4, 2020, Claimant was notified that he had been found guilty as charged and was dismissed effective immediately.

It is the Organization’s position that Claimant is a long-time employee with a good work record who admitted to a mistake. It argued that Claimant understood the magnitude of the error and the necessity to work safely as he had lost his father, a former Foreman on a Surfacing Gang, to an on track accident. It next argued that the Charging Officer did not follow the Carrier protocol when it was discovered the Claimant may have crossed over into territory which Claimant did not have authority. Lastly, it argued there were no audible alarms or visual lights from the HLCS device in the Carrier’s hy-rail vehicle that advised Claimant that Claimant occupied main track without proper authority. It closed by asking that the discipline be rescinded and the claim be sustained as presented.

It is the position of the Carrier that the Organization’s argument that the Charging Officer failed to follow proper protocol with the Claimant on the date of the incident lacks substance because there was no explanation as how Claimant was allegedly treated unfairly.

Turning to the merits, the Carrier argued the record shows Claimant operated out of assigned authority that was corroborated through testimony and Investigation Exhibits #3, #3a, #3b, #3c and #4. It argued that after proving Claimant’s guilt it appropriately disciplined Claimant as Claimant’s offense was a stand-alone dismissible offense and the second time the Claimant had committed the same violation. In conclusion, it asked that the discipline not be disturbed and the claim remain denied.

The Board has reviewed the transcript and record of evidence and is not persuaded by the Organization's procedural arguments. It is determined that the case will be resolved on its merits.

Review of the record reveals that Claimant admitted to his guilt on Page 12 of the Transcript. Furthermore, it is clear that the parties' understood that Claimant operated his hy-rail vehicle on the main track without proper Track Authority. Substantial evidence was adduced at the Investigation that the Carrier met its burden of proof that Claimant was guilty as charged.

The only issue remaining is whether the discipline was appropriate. At the time of the incident Claimant had approximately 18 years of service. The Carrier pointed out Claimant had been assessed a Record Suspension for the same type of violation in the prior year. Examination of Claimant's Discipline Record shows that the aforementioned offense had been worked off, thus at the time of the instant violation Claimant's Disciplinary Record was clear, however, Section IV, D, 1, g of the Carrier's Policy for Employee Performance Accountability (PEPA) states the following:

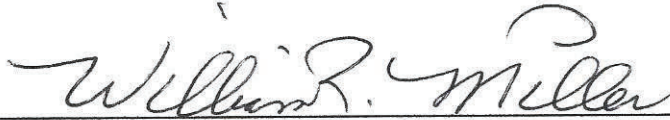
"1. Stand-Alone Dismissible Violations include, but are not limited to:

- g. A rule violation that could or does result in a serious collision or derailment serious injury to another employee or the general public, fatality, or extensive damage to BNSF or public property."**

Claimant's violation in this instance was grounds for dismissal, however, based upon a generally good work record and Claimant's truthfulness about his offense the Board finds and holds that discipline was appropriate, but dismissal was excessive and is reduced to a lengthy suspension that is corrective in nature. Claimant will be returned to service with seniority intact, all benefits unimpaired, but with no back-pay. Because of the serious nature of the instant offense a Three Year Review Period should be attached to the Claimant's Disciplinary Record upon Claimant's reinstatement. The Board also forewarns the Claimant that after reinstatement the Claimant should be careful to adhere to all Carrier and Safety Rules as failure to do such could result in harsher discipline depending upon the severity of a subsequent violation.

AWARD

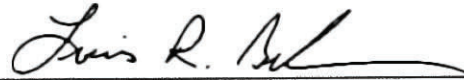
Claim partially sustained in accordance with the Findings and the Carrier is directed to make the Award effective on or before 30 days following the date the Award was signed.



William R. Miller, Chairman & Neutral Member



Michelle McBride, Carrier Member



Louis R. Below, Employee Member

Award Date: July 25, 2022