

PUBLIC LAW BOARD NO. 7564

Case No. 89/Award No. 89
Carrier File No. 10-18-0071
Organization File No. C-18-D040-10
Claimant: William E. Hanke

BNSF RAILWAY COMPANY)
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION)

Statement of Claim:

By letter issued December 11, 2017, Foreman William E. Hanke was issued a Level S 30 Day Record Suspension and a Three (3) Year Review period for his alleged violation of MWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS) after he failed to activate the HLCS device and to properly position the thumbwheel “while pulling the crossing and fouling the track at/or near MP 171.45 on the Hastings Subdivision on October 31, 2017 . . .” By letter dated December 20, 2017, the Organization, Randy Anderson, Vice General Chairman, filed a claim on Foreman Hanke’s behalf. The claim contends that the discipline that was issued “is inappropriate, excessive and should be overturned immediately . . . and that any mention of this investigation be removed from Mr. Hanke’s personal record.”

Facts:

By letter dated October 31, 2017 the Claimant was informed that:

An investigation has been scheduled at 1300 hours, Monday, November 13, 2017, at the Roadmasters Office, 1010 West South Street, Hastings, NE, 68901, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to activate HLCS device &properly (sic) position thumbwheel while pulling the crossing and fouling the track at/or near MP 171.45 on the Hastings Subdivision on October 31, 2017, at approximately 0700 CST, while associated with track authorities 352-3, 352-5, and 351-1, while assigned as a Foreman on Headquartered gang TSEC0410.

Carrier Position:

The Carrier insists that the Claimant received a fair and impartial investigation that established his violation of MWOR 6.50.5 because he admitted the failure and accepted responsibility for it, thus providing substantial evidence. The HLCS device is vital to the safety of employees. Working under another’s authority did not relieve the Claimant of the responsibility

to see that the HLCS device was activated and the thumbwheel properly aligned. This was the claimant's second Level S violation within twelve (12) months. The discipline was in accordance with the Policy on Employee Performance Accountability (PEPA) and should not be disturbed, as leniency is the Carrier's prerogative, not the Board's.

Organization Position:

The Organization contends that the investigation was not fair and impartial and that the Claimant was deprived of due process. The Claimant and his crew were protected by Foreman Peralto's authority and were never in any danger. The Driver of the vehicle used by the crew, Truck #22725, was to have thrown the thumbwheel. The Claimant may well have been affected by long hours worked over an extended period. There is no substantial evidence of blatant disregard for the rules.

Findings:


The Board finds nothing in the record to support the Organization's contention that the investigation was not fair and impartial or that the Claimant was deprived of due process. The Organization correctly notes that Foreman Hanke and his crew were protected by Foreman Peralto's authority and that the investigation provided no evidence that the crew was ever in danger. However, during the investigation the Claimant himself stated that he forgot to turn on the HLCS device and took responsibility for the failure, thus providing the required substantial evidence. The Claimant also noted that he was the EIC. Being EIC made him responsible for ensuring that the thumbwheel was properly aligned to the main track, even if the Driver was to have done this. Neither the long hours worked by the Claimant nor the "no harm, no foul" argument advanced by the Organization are persuasive. Railroading is an inherently dangerous industry that periodically produces reports of serious property damage, serious injuries and lives lost. Allowing serious safety violations, which this was, to go unpunished on a "no harm, no foul" approach to safety could result in a climate of reduced vigilance—a climate that could result over time in tragic consequences. This Board is unwilling to suggest that there is a margin for error. The discipline issued to the Claimant was in accordance with PEPA and is viewed as appropriate.

Award:

Claim denied.

Order:

This Board, after consideration of the dispute identified above, hereby orders that no Award favorable to the Claimant be made.



Zachary Voegel, Organization Member



Zahn Reuther, Carrier Member



I. B. Helburn Neutral Referee

Austin, Texas
April 29, 2019