

**PUBLIC LAW BOARD NO. 7585**

**Case No. 46 /Award No. 46**

**Carrier File No.: 10-14-0248**

**Organization File No.: C-14-D040-17**

**Claimants: Gustavo H. Medrano & Francisco A. Quinonez**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
-and- )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYES DIVISION - IBT** )  
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**FACTS:**

On March 4, 2014 at approximately 11:15 am, Claimant Gustavo Medrano was working as a Welder and Claimant Francisco Quinonez was working as a Grinder assigned to gang TRWX1824 on the Chicago Division. Both employees were found to have violated MOWOR 6.50.5 when the HLCS Unit associated with Track Authority 357.7 was not activated while fouling the track. Each was issued a Level S 30-day Record Suspension with a one-year review period.

**CARRIER POSITION:**

Rochelle Roadmaster Langloss said he was notified by the System Operations Team of a rules failure by a gang working under him. At the time of the incident, Claimants Medrano and Quinonez had overlapping limits and were joint with the Signal Maintainer.

Manager of Operating Practices Jochems stated his job is to observe the workforce and conduct operations testing to insure compliance with rules, policies and procedures. He said he observed Claimant Medrano fouling the rail with his boom, without activation of his HLCS. In the Carrier's view, there was no denial of due process and the discipline was posted within the time limits.

**ORGANIZATION POSITION:**

Claimant Quinonez stated there was a briefing with the contract welders but there was no discussion about the authority being joint. He said the HLCS was associated but not activated. He said he was not aware that it needed to be activated since he was not sitting on the tracks. He said he and Medrano documented their working limits and put their flag up; they did not know the contract welders did not have theirs up. In his view, it is unclear about when the HLCS must be activated.

Claimant Medrano stated he has worked for the railroad 38 years and has been in his position for 23 years with no prior discipline. He was the employee in charge on the day in question. The authority he received that day was joint with a Signal Maintainer and joint authority working limits flags were established on the east end of his authority. He explained he did not activate the HLCS because he did not know he needed to. To make the needed weld, he had to foul the track with a boom.

The Organization argues these employees showed no disregard for BNSF rules, procedures and safety, much less a marked disregard; neither one even knew they were in violation of the rules. It notes the PEPA Policy states it exists to deal with instances of "marked disregard," and concludes the policy is inapplicable. In the Organization's view, this is a case of inadequate training, and discipline has no place.

The Organization asserts Claimants have been denied a fair and impartial hearing in several respects: the hearing officer was not the individual who rendered the decision, Claimants were not paid to attend the investigation, the hearing officer evidenced bias and ignored the Organization's objections, the Organization's request for documents and a list of witnesses prior to the hearing was unfairly denied, and the record was not sent to the Organization for 34 days.

#### **DECISION:**

The Board is not persuaded that Claimants were denied a fair and impartial hearing. There was no credibility issue fundamental to the discipline decision, hence there was no need for the hearing officer to also serve as the decision-maker. Issues of employee pay are not due process issues which fall under the jurisdiction of this Board. The hearing officer's conduct did not so tarnish proceedings as to render the hearing unfair or biased. The timing of getting paperwork to the Organization has not been shown to exceed defined limits.

Rule 6.50.5 on Hy-Rail Limits Compliance System states:

The Hy-Rail Limits Compliance System (HLCS) is a safety system designed to monitor the position of HLCS equipped on-track equipment.

On subdivisions where HLCS is in effect, all HLCS equipped on-track equipment fouling or occupying the track authorized by Track and Time, Track Warrant or Track Permit must be associated with the authority and the system must be activated.

This rule is clear, and by its plain terms requires activation of the HLCS system whenever HLCS equipped on-track equipment is fouling a track. Claimants failed to comply with this rule. Their ignorance of the rule does not mitigate the offense because they are expected to know the rules and comply with them. Fouling a track is an equipment status which Claimants well knew to raise safety concerns and trigger important requirements.

The Board is aware of the years of loyal service rendered by these employees. However, the Carrier has already allowed this mitigating circumstance to reduce the review period to 12 months. The failure to activate HLCS was properly deemed serious enough to justify the discipline invoked, and was aggravated by Claimants' failure to assure rules compliance by the contract welders.

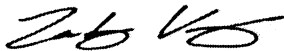
**AWARD:**

The claim is denied.

July 15, 2015



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



D. J. Merrell, Carrier Member