

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 62
Carrier File No.: 11-16-0111
Organization File No.: T-D-4806-E
NMB 119
Claimant: L. D. Bellew

BNSF RAILWAY COMPANY

-and-

**BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION - IBT**

FACTS:

Claimant was dismissed after the Carrier found a critical decision failure when BNSF vehicle 24398 traveled outside track authority on June 25, 2015 in violation of MWOR 6.3.1. The Organization contested the discipline as unjust and the matter was processed to review by this Board.

CARRIER POSITION:

The Carrier notes that Roadmaster Samuel Minton discovered the violation during an audit; Claimant had not reported it. It asserts that when approached, Claimant admitted his error and apologized. After the incident, Claimant sent in a letter admitting he was outside his limits and taking "full responsibility." At the investigation, Claimant said he looked at his smart mobile client application and saw blue (indicating authority) and thought it was his. He said when the alarm in his truck went off, he did not know why. He admitted that when he opened his screen back up, he saw the OS at West Berthold was white, indicating he was working outside his limits. He said he did not report it at the time because he was focused on his work following the geo car and "I just completely spaced it out at the time." The Carrier argues it is well established that where there is an admission of guilt, no further proof is necessary. It concludes that it has met its burden of proof in this case.

ORGANIZATION POSITION:

The Organization maintains there are important mitigating circumstances which have been ignored by the Carrier. It contends the Carrier has created a trap with its Smart Mobile Client computerized track authority, along with faulty track chart documentary resources. The Organization argues the PDF track authority file would close automatically

on the computer screen, and that this was at the root of the problem. It further contends that the screen is misleading about where the track authority is indicated. In addition, the Organization contends the track charts were obsolete and the location of the absolute signal, or the associated Enbridge Oil Facility switch, does not appear anywhere on the Carrier's track charts. It notes that the chart fails to show the west industry switch that would be west of County Road Crossing 9. Minton admitted during the investigation that the charts could be confusing. In the Organization's assessment, this mitigating circumstance should negate the discipline.

As the Organization's sees it, the Carrier has attempted to augment the record post hearing by including new testimony in its correspondence. It argues this constitutes a denial of due process because the Organization was denied any opportunity for cross examination.

DECISION:

Claimant has admitted his offense. The Board agrees with the Organization that the Carrier cannot shirk its duty to take into consideration mitigating circumstances which would properly impact the severity of his penalty. In this case, the evidence has established that the representation of authority on Claimant's computer at the time of the incident could be confusing. Indeed, Claimant explained his error, stating that he mistook his authority for someone else's. That said, it is his responsibility to be familiar with the materials upon which he is relying and to seek confirmation when needed. The argument regarding mitigating circumstances is credited but is limited in its weight.

The weight of mitigating circumstances must be balanced against any aggravating circumstances that may exist. Claimant heard his alarm go off, denied that he understood why and said when he checked, he found that he was indeed outside his limits. He failed to report this, claiming he "spaced out." This explanation is not credible. In the railroad industry, being outside one's limits of authority is an extremely serious situation, fraught with danger and likely discipline. The Board is not persuaded that an employee would simply "space out" about it. Indeed, when asked about it, Claimant remembered the event with clarity. Claimant's failure to report the event is either a very troubling lapse of judgment or an instance of attempted dishonesty. Either way, it constitutes a serious aggravating circumstance that counters and even exceeds the weight of the mitigating circumstances in the case.

The Board does not find any prejudicial procedural error in this case. It is well known that the record cannot be altered post-hearing. Insofar as post-hearing evidence garners no consideration, the lack of an opportunity to cross examine has no impact.

It is the responsibility of the employee to carefully read charts and to double check so that track authority is not breached. By the same token, it is the responsibility of management to provide employees with the proper tools to facilitate this task. Claimant should have been familiar with the Carrier's system, such that he could be careful in reading the information he was given. However, even if the outdated charts or color scheme in the

Carrier's software are deemed mitigating circumstances, Claimant's failure to promptly and honestly report being outside his authority is an aggravating circumstance of substantial gravity, outweighing any mitigating circumstances in the case.

AWARD:

The claim is denied.

January 19, 2018; Park City, Utah



Patricia T. Bittel, Neutral Member



Zachary Voegel, Organization Member



James Rhodes, BNSF Member