

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 64
Carrier File No.: 10-16-0218
Organization File No.: C-16-D040-11
NMB 106
Claimant: B. L. Hastings

BNSF RAILWAY COMPANY

-and-

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION - IBT

FACTS:

The Carrier determined that Claimant Hastings failed to activate his HLCS by properly positioning the thumbwheel while occupying track with vehicle 26013 on March 15, 2016. It found this to be a violation of Maintenance of Way Operating Rule (MOWOR) 6.50.5 Hy-Rail Limits Compliance System (HLCS) and issued him a Level S Record Suspension with a 36-month review period. The applicable rule states as follows in pertinent part:

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. The HLCS thumbwheel must be set to indicate the authorized track when the equipment is fouling that track.

The Organization protested that this discipline was unjustified. The dispute has been properly processed to this Board's review.

CARRIER POSITION:

The Carrier explains that HLCS is a safety overlay system, and Claimant's truck was equipped with a thumbwheel allowing HLCS to identify which particular track the employee is actually on. If the thumbwheel is not activated, it is incapable of warning the employee in the event he exceeds his track authority. According to the Carrier, Claimant's supervisor, Roadmaster Augustine Sintas, was notified that Claimant "was foul of the track" with his thumbwheel not activated. Claimant does not deny this assertion, but states he cannot recall. In its view, these facts are more than adequate to substantiate its disciplinary decision.

ORGANIZATION POSITION:

The Organization argues that testimony and exhibits support the conclusion that the HLCS unit was actually activated; exhibits show the vehicle's milepost location and the vehicle status as "true," thereby establishing that the HLCS unit was associated and activated. Further, Carrier witness Sintas confirmed at hearing that once the hy-rails on the vehicle hit the rail, the HLCS unit was automatically activated.

The Organization notes that in view of the tasks assigned by Claimant's supervisor, Claimant was required to multitask with several different work groups in different areas on the day in question. It asserts that the Carrier must assume responsibility cutting its maintenance forces to the bare bones and putting employees like Claimant in a precarious position.

DECISION:

Sintas testified as follows:

ALLAN BREDEN: Mr. Sintas, on the day in question, did Mr. Hastings' vehicle or equipment foul the track?

AUGUSTINE C SINTAS: Yes.

ALLAN BREDEN: As per Exhibit 7, Mr. Sintas, and regarding HLCS Compliance (Critical Decision) 855 Operat- Remote Operations Testing, was the thumbwheel in the correct position for the authority that he had?

AUGUSTINE C SINTAS: No. TR 14

Claimant testified at investigation that his HLCS was activated at the time but he could not recall whether his thumbwheel was selected. Insofar as Claimant did not deny having his thumbwheel inactivated, Sintas' testimony stands unrebutted.

The wording of MOWOR 6.50.5 is quite clear. When the thumbwheel is not in the correct position, the operating employee is in violation of the applicable rule. Because this impairs the ability of the system to warn the employee in the event track authority is exceeded, it was properly deemed a Level S offense. Though the system was activated and Claimant had complied with every other aspect of the rule, Claimant breached his track authority without use of the warning and safety devices provided to avoid this event. Given these circumstances, it must be said that the Carrier has met its burden of proof.

AWARD:

The Claim is denied.

January 18, 2018; Park City, Utah



Patricia T. Bittel, Neutral Member



Zachary Voegel, Organization Member



James Rhodes, BNSF Member