

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 65
Carrier File No.: 11-16-0158
Organization File No.: B-M-2917-E
NMB 106
Claimant: B.E. Peterson

BNSF RAILWAY COMPANY

-and-

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

FACTS:

Claimant was issued a Level S Record Suspension with a 36 month review period because he was found to have exceeded the limits of his main track authority on September 30, 2015. The Organization protested the discipline as unjust and the case was processed to consideration by the instant Board.

CARRIER POSITION:

The Carrier argues that Claimant admitted releasing his track authority and receiving a "pop-up box" telling him to contact the dispatcher just beforehand. However, as the Carrier describes it, Claimant ignored the message and did not contact the Dispatcher. Instead, he went ahead and released his authority even though he was not in a location protected by his new authority. In the Carrier's view, he was sitting on track without protection, vulnerable to any oncoming traffic. The Carrier notes there was no indication whatsoever that the HLCS system was not working properly at the time.

ORGANIZATION POSITION:

The Organization maintains that an abnormality occurred in the protocol used by the Carrier in this instance. The dispatcher did not call the Claimant when he allegedly exceeded his track authority. Further, the Smart Mobile Client permitted the cancellation of his occupied track authority. In the Organization's assessment, this suggests problems with the Carrier's HLCS system. It notes there was no evidence that the Carrier's

equipment was working properly, hence the Carrier cannot meet its burden of showing Claimant had any disregard for the rules.

DECISION:

Claimant admitted receiving a notice that he should not release his track authority without contacting the dispatcher. He elected to release it anyway. The fact that the system permitted Claimant's improper action cannot serve as a defense; it was Claimant who chose to release the authority despite the warning. In the view of this Board, if a message advises the employee to contact the dispatcher before releasing authority, then the failure of the dispatcher to contact the employee cannot be deemed a flaw in the system. Establishing that the Carrier's equipment malfunctioned constitutes an affirmative defense for which the requisite evidence is lacking. The Board is persuaded that Claimant failed to ensure that he was authorized to occupy the track he was on. This constitutes a clear violation of MOWOR 6.3.1. The Carrier has met its burden of proving substantial evidence to support the disciplinary action in question.

AWARD:

The claim is denied.

January 18, 2018; Park City, Utah



Patricia T. Bittel, Neutral Member



Zachary Voegel, Organization Member



James Rhodes, BNSF Member