

PUBLIC LAW BOARD NO. 7585
CARRIER FILE NO. 10-17-0001
ORGANIZATION FILE NO. C-16-D040-19
CLAIMANT: D.L. Tate

Parties To Dispute:

Brotherhood of Maintenance of Way Employees Division & BNSF Railway

Arbitrator:

Patricia Thomas Bittel

Statement of Claim: *The Organization alleges BNSF violated the Agreement when Claimant was issued a Level S 30-day Record Suspension and a one-year review period as a result of a formal investigation held on July 29, 2016, for Claimant's violation of MWOR 10.3 Track and Time, and MWOR 1.4 Carrying Out Rules and Reporting Violations, when the Claimant failed to maintain within his track authority limits and failed to report the authority violation on June 8, 2016 at 1358.*

Background Facts:

Claimant has acknowledged that on June 8, 2016, he was aware of his limits and already backing up when he received the exceeds alarm. He also conceded that he did not report the incident until the next day. He explained that he thought his authority was different, but did not want to navigate away from the EAM screen so he did not double check it. When the EAM stopped synchronizing, he did check it, learned he had exceeded his

limits, began backing up and requested another authority. This case arises in the context of prior discipline: in May of 2015, Claimant Tate received a formal reprimand for striking a crossing gate while backing a vehicle.

The Organization argued the EAM has to be stopped and restarted multiple times during a shift, slowing down the employee's efficiency. It notes that on the day in question, the Carrier had loaded the employee down with work and he was running behind. It denies any negligence on the part of the Claimant and contends the discipline was arbitrary and unfounded.

Opinion of the Board:

Claimant's testimony makes it clear that he did not want to navigate away from the EAM screen to check his authority. While this is consistent with an effort to work efficiently, it nonetheless establishes negligence on his part. Taking measures to insure safety inevitably require some time, yet unquestionably take precedence. It was Claimant's duty to be absolutely certain of his authority at all times. He was well aware that failure to stay within his defined authority was a serious offense which was required to be reported immediately.

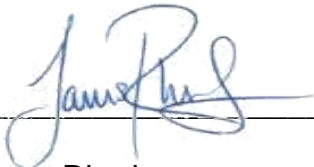
It is established on the record that Claimant violated his limits and also failed to report the violation. It is to his credit that he realized his error instantly and was already backing up when he heard the exceeds alarm. However, the Board is not in a position to deem the offense non-serious on this basis. The Carrier has classified all safety violations as serious in nature. Breaches of track and time, by definition, carry a heavy risk of inadvertent impact with equipment or personnel, a risk which cannot be overestimated in gravity. To begin to make distinctions in the nature of the offense or the anticipated penalty based on distance or duration would open a Pandora's box of confusion and leave employees without proper notice of the penalty for violation of track and time requirements. As a result, this Board finds the Carrier within its rights to issue the discipline of concern.

AWARD:

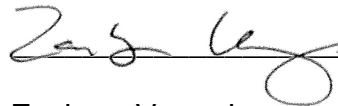
The claim is denied.



Patricia Thomas Bittel
Chair and Neutral Member



James Rhodes
Carrier Member



Zachary Voegel
Labor Member

Dated: January 28, 2019