

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 77
Carrier File No.: 10-17-0268
Organization File No.: C-17-D040-23
Claimant: B.L. Hurst

BNSF RAILWAY COMPANY)
(former Burlington Northern Railroad Company))
)
-and-)
)
BROTHERHOOD OF MAINTENANCE)
OF WAY EMPLOYEES DIVISION - IBT)

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 probation as a result of a formal investigation held on June 5, 2017, for Claimant's violation of MWOR 6.50.5 "Hy-Rail Limits Compliance System (HLCS)" and MWOR 10.3 "Track and Time" for his track authority violation while piloting Herzog rail detector HRZ195 on May 23, 2017 at approximately 1155 hours near milepost 59.84 on the St Joseph Subdivision while assigned as a Flagging Foreman on the St Joseph Subdivision.

CARRIER POSITION:

On May 23, 2017, Claimant was working as a flagging foreman with responsibility to pilot the Herzog Rail Detector and get track authority for its movements. Claimant told the driver the wrong limits and they exceeded their authority, triggering a vehicle alarm. Claimant told the driver to back up, then obtained the proper track authority.

Before receiving notification of the exceeds alarm, Roadmaster Ken Brady asked Claimant about his day. Claimant said that everything went "great" and did not disclose the fact that he had exceeded his track authority. At the Investigation, Claimant admitted it was his responsibility to tell the driver to stop before exceeding track authority and acknowledged he did not do so. He conceded that he told the driver the wrong limits to their authority. The Carrier views this as a clear instance of rules violation and maintains the discipline taken was proper.

ORGANIZATION POSITION:

The Organization argues Claimant was denied a fair hearing in that statements from Herzog employees were admitted with no opportunity for cross examination. The Organization asked for a postponement to get the witnesses but the request was denied.

In the Organization's view, the fact that Claimant was not in control of the vehicle exculpates him from any responsibility for its movement. It concludes the discipline taken was improper and lacking in factual basis.

DECISION:

The Board does not find the conduct of the hearing officer to have been prejudicial in this case. There was no factual dispute which could have been resolved by bringing in the Herzog employees as witnesses. During the investigation, Claimant acknowledged that he told the driver the wrong limits and limits were exceeded. It was his responsibility to obtain track authority and to accurately communicate that authority to the driver of the Herzog. He failed in this essential duty. Violations of track authority are reasonably viewed by the Carrier as serious in nature. It follows that there was substantial evidence to support the allegations in this case.

AWARD:

The claim is denied.

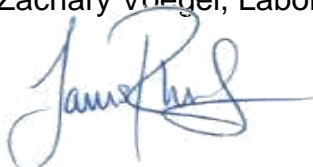
May 1, 2019



Patricia T. Bittel, Neutral Member



Zachary Voegel, Labor Member



James Rhodes, Carrier Member