

**PUBLIC LAW BOARD NO. 7585**

**Case No. /Award No. 82**  
**Carrier File No.: 10-18-0143**  
**Organization File No.: C-18-D040-19**  
**Claimant: D. E. Law**

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**BNSF RAILWAY COMPANY** )  
**(former Burlington Northern Railroad Company)** )  
 )  
-and- )  
 )  
**BROTHERHOOD OF MAINTENANCE** )  
**OF WAY EMPLOYES DIVISION - IBT** )  
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**STATEMENT OF CLAIM:**

The Organization alleges that BNSF violated the Agreement when Claimant was disciplined for violating MWOR 6.50.5 "Hy-Rail Limits Compliance System (HLCS)" for his failure to activate the HLCS properly by properly activating hy-rail mode switch while occupying track on December 20<sup>th</sup>, 2017.

**CARRIER POSITION:**

On December 20, 2017, Claimant Law was working as a track inspector responsible for piloting a Herzog track detection truck. On the following day, the Remote Auditing team sent a report to Claimant's supervisor stating that Claimant had allowed the truck to occupy track without activating the HLCS system. It noted there were no trouble tickets or reports of malfunction with the system.

The Carrier maintains this constitutes substantial evidence that Claimant violated MWOR 6.50.5. Because the HLCS system provides the user with visual and audible warnings when (s)he nears the limits of his/her authority, the Carrier views the failure to activate the system as a safety issue. The Carrier denies that any of the procedural violations alleged by the Organization prejudiced Claimant in any way. It asserts the 20-day Record Suspension with a one-year review period was justified.

**ORGANIZATION POSITION:**

The Organization maintains the Carrier violated Rule 40C by failing to afford Claimant and the Organization adequately specific notice of the alleged violation. The Notice in question stated as follows:

An investigation has been scheduled at 1000 hours, Wednesday, January 3, 2018, at the Conference Room, 3700 Globeville Road, Denver, CO, 80216, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to activate the HLCS properly by properly activating by-rail mode switch while occupying track on December 20th, 2017.

The Organization points out that at the time, Claimant was not driving the Herzog truck, but was instructing an outside contractor employee on how to operate the truck. It notes the HLCS toggle switch is on the low side of the console, unreachable from the passenger seat and with a blocked view. Claimant insists he specifically instructed the driver to engage the HLCS system, without result. The Organization concludes that the lapse was attributable to the driver failing to follow Claimant's instructions, and maintains it is patently unfair to blame Claimant for the misdeeds of someone else.

**DECISION:**

We do not find the Notice to be insufficient. It advised Claimant of the date and exact nature of the alleged violation. Though it did not specify the milepost, there is no showing that lack of this information inhibited any aspect of Claimant's defense. The Organization has not demonstrated that Claimant was prejudiced in any way.

The HLCS Report and SMC logs upon which the Carrier relies indicate HRZ184 occupied track from 12:08 CT until 12:30 CT with no HLCS activation. It was reasonable for the Carrier to rely on these records and to consider them to be unbiased and reliable sources of information. Roadmaster M. Paz testified that it was Claimant's responsibility to activate the HLCS toggle switch:

ALLAN BREDEN: Mr. Paz, is the responsibility of was it the responsibility of Mr. Law to operate the H hy-rail mode sw switch inside HRZ184?

MICHAEL PAZ: Yes. (TR 12)

During the investigation, Claimant admitted he had been tasked with piloting a Herzog on the day in question (TR 22) and was the employee in charge (TR 23). According to Claimant:

The toggle switch is located by the right knee on HRZ184 of the driver. Uh so, the the only way that toggle switch can be activated through verbal

direction of the pilot which I did direct him verbally to turn on the toggle switch of HRZ184. \* \* \* So, my reliant I was reliant on the driver to activate that toggle switch. Whether or not he activate it, I had no visual or no access to it.

He asserted the driver was new, and he had to repeat his instructions two to three times. Though he testified he could not see the whether the activation light was on or not, he did not claim that he ever asked the driver whether he had activated the HLCS. Though he claimed he was having to give the driver repeated instructions, there is no assertion that he repeated the instruction to activate the HLCS, or that he asked the driver whether he had activated it.

Though a contractor employee was driving, we do not find this to be a mitigating circumstance adequate to reduce the discipline taken here. Claimant was tasked with making sure the initiate driver performed all tasks properly. He knew this and repeated many of his instructions. Knowing he could not see whether the HLCS system had been activated, he could rightfully be expected to obtain verbal assurance from the driver that it was on. He did not. Though he may have given the initial instruction, he knew that with a new driver, a single instruction is often not sufficient. It was his duty to make sure the driver was in compliance with applicable rules, and in this regard, he failed. We find the discipline taken was not disproportionate to the offense.

**AWARD:**

The claim is denied.

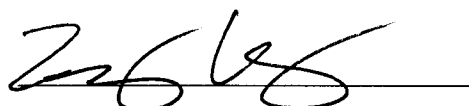


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Patricia Thomas Bittel  
Chair and Neutral Member



Samantha Rogers  
For the Carrier



Zachary Voegel  
For the Organization

Dated: February 13, 2020