

PUBLIC LAW BOARD NO. 7585

Case No. /Award No. 94
Carrier File No.: 10-19-0167
Organization File No.: C-19-D040-15
Claimant: K. Gunnare

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

STATEMENT OF CLAIM:

The Organization objects to BNSF's decision to issue Claimant a Level S 30-day Suspension with a 3-year review period for a January 14, 2019 main track authority violation at or near MP 0.8 on Main Track 3 on the Orin Subdivision while assigned as a Track Inspector on Gang TINS1486 in violation of Maintenance of Way Operating Rule 6.3-Track Occupancy.

CARRIER POSITION:

The Carrier argues that Claimant failed to validate the authority limits on the white page after the dispatcher approved his request for track authority. He admitted at the Investigation that he was frustrated by problems with the unrelated Employee Assist Management application, and simply forgot to bring the white page back up. In the Carrier's view, exceeding track limits is a serious violation because it puts personnel and equipment at risk of impact with oncoming trains. It maintains that the Board has no authority to superimpose leniency on managerial discretion in this case.

ORGANIZATION POSITION:

The Organization notes that Claimant has been a Track Inspector for 17 years at the time of the incident. It maintains he has been totally honest at every step of the process and simply made a mistake in not bringing up the white page again to check it. In the Organization's perspective, the disciplinary measure meted out in this case is excessive

and unduly harsh, and must be modified or rejected as an abuse of managerial discretion.

DECISION:

The record in this case establishes that Claimant did indeed commit a serious safety violation in that he exceeded his track authority. The Organization's argument that the discipline is harsh is well taken. However, discipline, in order to be overturned by the Board for excessive harshness, must rise to the level of an abuse of discretion, that is, it must be arbitrary, capricious, unreasonable or discriminatory. It is significant that in 2016, Claimant received moderated discipline in the form of a formal reprimand with a 12-month review period for the exact same offense: exceeding the limits of his track authority. Given this context of repeat violation, the Board is not persuaded that the Carrier has abused its discretion in this case.

AWARD:

The claim is denied.

Dated: November 25, 2020



Patricia T. Bittel, Neutral Member

Zachary C. Voegel

Zachary Voegel, Labor Member



Samantha Rogers, Carrier Member