

BEFORE PUBLIC LAW BOARD NO. 7590
CASE NO. 6

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES DIVISION

v.

BNSF RAILWAY
(Former ATSF Railway)

Carrier File No. 14-11-0219
Organization File No. 1405-13N1-1157

STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement on September 29, 2011 when it assessed Claimant, James E Stephen, a Level S 30-day Record Suspension, with a 3-year review period, for alleged violation of Maintenance of Way Operating Rule 6.50.5-Hy-Rail Limits Compliance System, for alleged failure to properly use Hy-Rail Limits Compliance System (HLCS) equipment while working on the Houston Subdivision.
 2. As a consequence of the violation referred to in part (1), the Carrier shall immediately remove the discipline from Claimant's record with seniority, vacation and all other rights unimpaired, and make him whole for all time lost account of this incident.
-

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7590 has jurisdiction over the parties and the dispute involved herein.

In the instant matter, Claimant received a letter dated August 1, 2011, which provided:

You are hereby notified to attend an investigation meeting scheduled at 0900 hours, Wednesday, August 3, 2011, at the Roadmaster's Office located at 201 Cedar St., Teague, Texas 75860, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly utilize Hyrail Limits Compliance System equipment during your occupation of main track in an on-track vehicle equipped with HLCS equipment on the Houston Subdivision on Track Warrant 813-26 on July 19, 2011 in violation of Maintenance Of Way Operating Rule 6.50.5. Hyrail Limits Compliance System.

Following the investigation, Claimant received a letter dated September 29, 2011, which provided:

As a result of this investigation, held on September 1, 2011 at 1030 hours at the Roadmaster's Office located at 201 Cedar St., Teague, Texas, you are hereby assessed a Level S 30 Day Record Suspension for your failure to properly utilize Hyrail Limits Compliance System equipment during your occupation of main track in an on-track vehicle equipped with HLCS equipment on the Houston Subdivision on Track Warrant 813-26 on July 19, 2011. In addition, you are being assessed a Three (3) Year Review Period that commences on September 29, 2011. Any rules violation during - this review period could result in further disciplinary action. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MOWOR 6.50.5 Hy-Rail Limits Compliance System (HLCS).

Rule 6.50.5 entitled "Hy-Rail Limits Compliance System (HLCS)" requires, among other things, that the HLCS system be engaged when HLCS is in effect.

The evidence established that electronic monitoring revealed that Claimant occupied the main track in an HLCS equipped on-track vehicle without utilizing the HLCS equipment as required by MOWOR 6.50.5. HLCS was in effect on the Houston Subdivision. As information, this employee did not indicate to the dispatcher that the HLCS equipment was not working during the pre-authority briefing. Also, records indicate the HLCS equipment was not reported to Telecommunications.

The Organization argues that the HLCS system has been problematic in Claimant's vehicle and points to the supporting documentation. The Carrier counters that the If HLCS equipment is not operational, this fact must be communicated to the dispatcher.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

After a review of the record, the Board finds that there is no substantial evidence in the record of the misconduct.

The Carrier witness testified that monitoring of electronic reporting and communications showed that Claimant occupied main track but did not use the HLCS. The Carrier witness did not testify

regarding whether the system was working properly on the date at issue. Claimant testified that he used the HLCS on the date at issue and that it was functioning. However, he also testified that the HLCS has been problematic since receiving this vehicle and that a relief employee has also had problems with it. He stated that it had switched on and off and also agreed that there were dead spots in the territory. The evidence also includes a record of complaints and repairs for this vehicle. The evidence is contradictory and it is documented that there have been repairs on this vehicle. There is nothing in the record that indicates that the vehicle's HLCS system was tested and working properly. Accordingly, Claimant's testimony that he was using the HLCS is uncontradicted.

Claim sustained.

Brian Clauss

Brian Clauss, Chairman

Samantha Rogers

Samantha Rogers, Carrier Member

David D. Tanner

David D. Tanner, Organization Member

Signed on December 23, 2013