

BEFORE PUBLIC LAW BOARD NO. 7590

CASE NO. 53

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V

BNSF RAILWAY

(Former ATSF Railway)

Carrier File No. -14 16 0295

Organization File No. 2433 SL13NI 1669

Claimant: J. Rasch

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

The claimant shall be made whole for all financial losses as a result of the violation, including compensation for: 1.) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the claimant while wrongfully removed from service); 2.) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while the claimant was out of service; 3.) overtime pay for lost overtime opportunities based on overtime for any position claimant could have held during the time claimant was removed from service, or on overtime paid to any junior employee for work the claimant could have bid on and performed had the claimant not been removed from service; 4.) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service commencing June 22, 2016, continuing forward and/or otherwise made whole. All notations of the dismissal should be removed from all Carrier records.

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**Findings:**

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 May 12, 2016, advising him to appear at an investigation:

for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to protect men and equipment when you exceeded the limits of your track authority at or near MP 132.1, Ft. Scott Subdivision, on May 4, 2016, while assigned as Track Supervisor. The date BNSF received first knowledge of this alleged violation is May 9, 2016. This investigation will determine possible violation of MWOR 6.3 Track Occupancy.

An investigation was held after agreed postponements. Claimant received a letter dated June 22, 2016, which provided:

As a result of investigation held on Friday, May 27, 2016 at 1000 hours at BNSF Allen Conference Room, 1625 North Lexington Avenue, Springfield, MO, 65802 you are hereby dismissed effective immediately from employment with the BNSF Railway Company for failure to protect men and equipment when you exceeded the limits of your track authority at or near MP 132.1, Ft. Scott Subdivision, on May 4, 2016, while assigned as Track Supervisor. It has been determined through testimony and exhibits brought forth during the investigation that you were in violation of MWOR 6.3 Track Occupancy.

In assessing discipline, consideration was given to your discipline record and the discipline assessed is in accordance with the BNSF Policy for Employee Performance and Accountability (PEPA).

Enclosed are copies of the investigation transcript and exhibits entered during the investigation. Copies of these documents have been sent to your Representative.

This letter will be placed in your personnel record.

The Carrier maintains that there is substantial evidence in the record to support the discipline and that the decision to terminate Claimant was not an abuse of Carrier discretion. According to the Carrier, Claimant exceeded the limits of his track authority and occupied track within the authority of another work group. He admitted that he did not check his paperwork and felt rushed.

The Organization responds that this situation could have been avoided had the Carrier not improperly denied Claimant the opportunity to hold the proper job instead of forcing him into a position that he did not wish in order to avoid working in the Oklahoma City Yard. Claimant was rushed due to the Rail Detector and made a mistake about his authority. He had a job briefing and had tested his HLCS. It was an abuse of Carrier discretion to dismiss Claimant from service after eighteen years with the Carrier.

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.

There is substantial evidence of the Rule violation in the record. The record contains the following report:

The employee received authorities 367-17 (0809 CST) and 367-24 (0841 CST). The HLCS Remedy report, SMC logs, and audio archives indicate that 29139 exceeded the limits of authority at approximately 0853 CST at MP 132.1 on the Ft Scott Subdivision. At approximately 0853 CST 29139 passed the NBCS NSS lantha and received an exceed alarm. At approximately 0854 CST 29139 reversed course and re-entered the limits of authority 367-17.

The evidence shows, and Claimant admits, that he exceeded the limits of his Track Authority as detailed in the report. Although the Organization claims that the situation was somehow caused by the Carrier improperly handling Claimant's bid, this is not the proper forum for reviewing job bidding. Further, even if the job bid was improper, it does not excuse Claimant exceeding the authority. Moreover, although Claimant stated that he was rushed because he did

not want to delay the Rail Detector, that also does not excuse him from properly checking and confirming his authority.

The evidence shows that Claimant exceeded his track authority. There is substantial evidence of Claimant's Rule violation. The Carrier did not abuse its discretion in terminating Claimant. The instant violation was Claimant's third serious infraction in a short period of time.

**Award:**

Claim denied.

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Organization Member

A blue ink signature, appearing to be 'Brian Clauss', written over a horizontal line.

Brian Clauss  
Neutral Member

A blue ink signature, appearing to be 'Dana H. Rogers', written over a horizontal line.

Carrier Member