

Award No. 49
Case No. 49
NMB Case No. PLB-07602-000049

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY)
EMPLOYES DIVISION—IBT)
)
v.)
)
BNSF RAILWAY COMPANY)

Carrier File No. 10-15-0049
Organization File No. C-15-D040-3

Claimant — Logan Moore

BACKGROUND:

This claim challenges the Carrier's imposition of a Level S 30-day record suspension with a 3-year review period for the Claimant's alleged failure to obtain proper track protection on August 24, 2014, while he was conducting a heat inspection. At the time of the incident that led to his discipline, Claimant was working as a Track Inspector at Stronghurst in the Chillicothe Subdivision. He had been employed by the Carrier for about two and one-half years but had only been working at a Track Inspector since August 10, 2014.

On August 24, 2014, the Claimant was working as a Track Inspector using a Hy-Rail vehicle to perform a heat inspection on Main 2 of the Chillicothe Subdivision. The Claimant had only been in the position for about two weeks, and this was his first solo inspection on this particular piece of track. At 1821, he had obtained track authority to work between CP 1850 (approximately MP 185) and CP 1844 (specifically, MP 184.171). At CP 1850, he discovered a damaged frog. He stopped and called the problem in to the Fort Madison dispatcher for repair, putting a slow order on the switch. He then contacted the Roadmaster on duty to inform him. According to the Claimant's statement and his testimony, he attempted to contact the welders. He tried contacting another Track Inspector, Shannon Brown, under whom he had

trained, to verify that he had taken the correct remedial action to protect traffic. He then proceeded toward CP 1844. According to the Claimant, he was reviewing the actions he had taken in his mind, when he realized that he had exceeded his track limit without obtaining new authority. He immediately reversed the Hy-Rail until he was back within his limit. He attempted to use the Smart Mobile Client system to obtain a new warrant but was unsuccessful; he had only been trained on the system the week before and this was the first time he tried to use it. He then traveled to the nearest crossing and released his existing track and time authority between CP 1850 and CP 1844. (This is confirmed on the record at 1649.) He then contacted his Roadmaster, Nick Burwell, to report what had happened. According to Burwell, the Claimant contacted him at about 1900 hours to notify him that he had gotten out of his track and time. Burwell scheduled a for-cause test and headed to Galesburg to get the Claimant's statement and check on his well-being.

The Carrier sent Claimant a Notice of Investigation dated August 27, 2014, informing him that an investigatory hearing had been scheduled "for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to obtain proper track protection (A Critical Decision failure) when you allegedly exceeded the track and time authority you were occupying on August 24, 2014, at approximately 1840 and using a mobile hands free device during hi-rail movement while assigned to Position TINS 2169 as Track Inspector."

Following a mutually agreed postponement, the hearing was held September 26, 2014. At the hearing, the Claimant and Mr. Burwell testified to the facts as above. According to Burwell, the Claimant was "very honest" and "up front" about what had happened. Burwell had concluded that Claimant was on his cell phone with Shannon when he went past MP 184.171, which Claimant denied. The Claimant explained that his FRA-supplied reference book and his EI were still open in front of him and he was going over his actions in his mind, glancing occasionally at the documents. He was trying to continue his heat inspection because a Z Train was closing in on his location and the Dispatcher has asking how long before he could move off the tracks. Claimant testified that he was a little distracted, between the Dispatcher who was trying to hurry him along and the fact that was tired: he had been called out to work the night before at about 11:15 p.m. and was not released to go home and get some rest until 2:30 a.m.

The Carrier's Decision Letter, issued October 16, 2014, concluded that the Claimant had violated MWOR 6.3.1 Main Track Authorization, and assessed a Level S 30-day Record Suspension with a three-year review period. There was no mention of MWOR 1.10. The Organization filed a timely appeal protesting the Carrier's decision. The parties having been unable to resolve the matter through their grievance process, the matter was submitted to the Board for a final and binding decision.

According to the Carrier, it is up to employees to make sure that they have and remain within the proper track and time authority. The Claimant acknowledged that he had violated his track authority, which establishes his guilt. Track authority in the railroad industry is a critical component of safety: when trains or any other type of equipment operate outside of their authority limits, there is always the possibility of a collision, injuries and fatalities. The evidence here is that the Claimant got distracted while he was performing track inspections and got outside his limits. Given the potentially serious consequences of Claimant's conduct, the discipline assessed was appropriate and should be upheld.

The Organization contends that the discipline imposed on the Claimant was excessive and arbitrary in light of the circumstances. The Claimant was honest and forthcoming, reporting himself that he had inadvertently gone over his track limit while he was trying to do the best job possible. He was tired and preoccupied, and being pressured by an impatient Dispatcher to hurry. He realized his mistake almost immediately, reversed, and returned to his limit. Exceeding his limit was an honest mistake, and he should not be subjected to a Level S suspension as a result. He had never used the Smart Mobile Client program before. In a case like this, the Carrier should work together with the employee and the Organization to address whatever training needs the employee has, not punish him for trying to do the right thing.

FINDINGS AND OPINION:

Public Law Board 7602, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board has jurisdiction over the dispute involved herein.

The Carrier found the Claimant guilty of violating MWOR 6.3, Track Occupancy. The original charges included an alleged violation of MWOR 1.10, Games, Reading, or Electronic Devices. The October 16, 2014, Decision Letter only spoke to MWOR 6.3, and the arguments submitted by the parties are limited to that rule, so the Board will not further address MWOR 1.10.

One the most critical safety aspects of track maintenance is obtaining authority to occupy track during maintenance operations. This authority has two components: time and location. Hence, a dispatcher or control operator will authorize a crew to occupy a specified section of track, identified from one milepost to another (or any distance between), for a specific period of time. MWOR 6.3 addresses Track Occupancy. Rule 6.3.1, Main Track Authorization, reads, in relevant part:

Occupying or Fouling Track

.....

When requesting authority or establishing protection, the employee in charge must ensure that equipment and employees do not occupy or foul the track until authority is received or protection is established. The employee requesting authority must be qualified on these rules and tell the train dispatcher or control operator where the main track will be entered.

.....

At 1820, or 6:20 p.m., on August 24, 2014, the Claimant had obtained track authority to perform the heat inspection from CP 1850 (MP185.064) to CP1844 (MP184.171). The data in the record establishes that at 18:33:58, he was at MP 185.064. By 18:37:28, the Hy-Rail had traveled to MP 184.185. At 18:37:44, it was out of limit at MP 184.096 and at 18:37:59 remained out of limit at MP 184.085. At the next reading, 18:38:14, the Hy-Rail was back within limits at MP 184.182. It had been out of limit for less than seconds¹ and a distance of about 0.086 miles, or 454 feet.²

The record is indisputable that the Claimant exceeded his track authority when his Hy-Rail went past MP 184.170 as far as MP 184.085. In essence, the Organization seeks leniency for the Claimant, based on his honesty, his earnest effort to perform his

¹ This is the amount of time between the two in-limit readings on either side of the out-of-limit period: 18:38:29 minus 18:37:44.

² Claimant had track authority to MP 184.171. The farthest distance recorded by the Hy-Rail was at MP 184.085, for an out-of-limit distance of 0.086 miles (184.171 – 184.085). This translates into 454 feet (0.086 x 5280 ft/mi.).

job as well as he could, his fatigue on the day of the incident, and the fact that he was relatively new to the position of Track Inspector and this was the first time he was conducting an inspection on his own. This Board has previously addressed cases of employees exceeding their track and time authority. (See PLB 7602, Award No. 5) Employees are often sympathetic, as the Claimant is here. But the literally deadly potential consequences of exceeding one's limits of track and time make it one of the most significant safety violations that exists, and being distracted or tired does not excuse the infraction. When all is said and done, the Claimant exceeded his track authority. The Carrier treated his infraction as the significant safety violation it was. As the Board noted in Award No. 5, "Given the potential seriousness of operating out of one's authority, the Board is hesitant to second-guess the Carrier's determination of the appropriate penalty." The same holds true in this case.

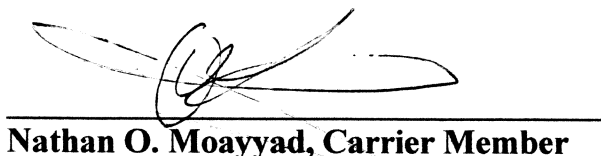
AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant not be made.


Andria S. Knapp, Neutral Member


Nathan O. Moayyad, Carrier Member


Zachary Voegel, Organization Member

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