

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 69

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

and

BNSF RAILWAY

BNSF 10-17-0073  
BMWE C-17-Do40-5  
Claimant: C. Housewright

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STATEMENT OF CLAIM

The Organization requests that the discipline of Mr. Housewright be overturned, no reference to this discipline be placed in Mr. Housewright's personnel record and he be made whole.

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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 7602 has jurisdiction over the parties and the dispute involved herein.

In the instant matter, Claimant received a letter dated November 23, 2016, advising him of an investigation:

An investigation has been scheduled at 1000 hours, Thursday, December 1, 2016, at the BNSF Railway Office Galesburg, 1670 South Henderson St, Galesburg, IL, 61401, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to properly protect maintenance of way vehicles & employees and alleged main track authority violation resulting in on-track collision on the Chillicothe Subdivision on the Main Track on November 21, 2016 at approximately 1030 while employed as a 1st Class Carpenter resulting in damage to BNSF vehicle 23917.

Following continuance, an investigation was held. Claimant was sent a letter dated January 4, 2017, which provided:

As a result of investigation held on Thursday, December 8, 2016 at 1000 hours at BNSF Railway Office Galesburg, 1670 South Henderson St, Galesburg, IL, 61401 you are hereby assessed a Level S Combined Suspension for your failure to properly protect maintenance of way vehicles & employees and main track authority violation resulting in on-track collision on the Chillicothe Subdivision on the Main Track on November 21, 2016 at approximately 1030 while employed as a 1st Class Carpenter resulting in damage to BNSF vehicle 23917.

This combined suspension will be served as 5 days Actual Suspension as follows: January 9, 2017 through January 13, 2017, and 25 days Record Suspension.

In addition, you are being assessed a Three (3) Year Review Period that commences on December 8, 2016. 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 MWOR 11.3 Fouling the Track and MWSR 1.6.2 Employees Fouling the Track.

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).

The Carrier maintains that Claimant violated the rule obtaining authority for Main track 2 but fouling Main Track 1. HLCS is a safety overlay and therefore a backup. It is not intended for employees to relay on HLCS exclusively.

The Organization responds with a procedural error allegations that the hearing was not conducted in a fair manner. On the merits, the Organization contends that there was no marked disregard for the rules. Claimant was not advised that the HLCS system did not function properly in the area of the incident. Claimant was trying to follow a safe course of action in compliance with the rules.

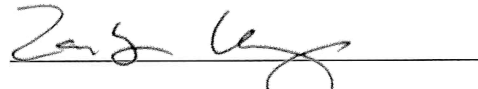
The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment and decide the matter according to what might have done had the decision been ours. Rather, our inquiry is whether 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.

This Board finds that there are no procedural violations which void the discipline. The hearing was conducted in a fair and proper manner. On the merits, this Board finds substantial evidence in the record of the violation. The evidence shows that Claimant admitted to being mixed up on his directions and setting down on Main track 1 despite having authority to occupy Main Track 2. Although the Organization argues that HLCS could not differentiate between limits on the two main tracks, the evidence also shows that HLCS is not for primary reliance and is a safety backup. Claimant was still under an obligation to determine whether he was setting down to hyrail on the proper track.

Claim denied.

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Carrier Member

A black ink signature, possibly reading "Zeng", written over a horizontal line.

Organization Member

A black ink signature, possibly reading "B. Chen", written over a horizontal line.

Neutral Member

Dated: 02-04-2019