

BEFORE PUBLIC LAW BOARD NO. 7602

CASE NO. 71

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

and

BNSF RAILWAY

BNSF 10-17-0114  
BMW C-17-DO40-10  
Claimant: J. Williams

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STATEMENT OF CLAIM

The Organization requests that the discipline of Mr. Williams be overturned, no reference to this discipline be placed in Mr. Williams' 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 September 9, 2016, advising him of an investigation:

An investigation has been scheduled at 1100 hours, Monday, September 19, 2016, at the BNSF Conference room, 1645 Oak St., La Crosse, WI, 54603, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your alleged failure to stay within your track and time limits when you released track authority 355-77 beneath yourself at approximately 1131 on Tuesday, September 6th 2016, working as foreman while piloting the Rail Detector Car on Main 2 near Bay City, WI.

Following an investigation, Claimant was sent a letter dated December 16, 2016, which provided:

As a result of investigation held on Thursday, November 17, 2016 at 1100 hours at BNSF Conference room, 1645 Oak St., La Crosse, WI, 54603 you are hereby assessed a Level S 30 Day Record Suspension for your failure to stay within your track and time limits when you released track authority 355-77 beneath yourself at approximately 1131 on Tuesday, September 6th 2016, working as foreman while piloting the Rail Detector Car on Main 2 near Bay City, WI.

In addition, you are being assessed a Three (3) Year Review Period that commences on December 16, 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 10.3 Track and Time.

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 when he released the wrong authority. He released the authority in the area he was occupying and not the authority in the area he had vacated. Claimant contacted the Dispatcher immediately upon getting the HLCS alarm and obtained authority for the area he was occupying. This is not a case where the HLCS and SMC malfunctioned. This is a case where Claimant released the wrong authority.

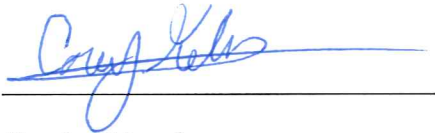
The Organization responds with a procedural argument that the matter was prejudged. On the merits, the organization argues that there are known HLCS malfunctions in this area of track. The system does not operate properly in this area. If HLCS and SMC had been working properly, then there would not have been a problem because Claimant would not have been able to release authority or the track upon which he was occupying.

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.

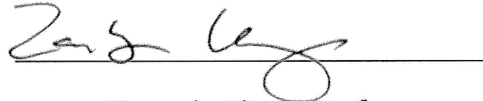
This Board finds that there are no procedural violations which void the discipline. On the merits, this Board finds substantial evidence in the record of the violation. The evidence shows that Claimant released the authority he was occupying. HLCS and SMC are safety backups. Claimant released authority and immediately requested authority.

An examination of the Claimant's record does not indicate the Carrier abused its discretion when it imposed the instant discipline.

Claim denied.



Carrier Member



Organization Member



Neutral Member

Dated: 02-04-2019