

PUBLIC LAW BOARD 7702

CASE NO. 6

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BNSF RAILWAY COMPANY

CARRIER CASE NO. 11-11-0029

V.

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYES DIVISION / IBT

ORGANIZATION CASE NO. S-P-1549-G

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#### STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood :

- 1) The discipline (dismissal) imposed upon Mr. C. Van Ness by letter dated September 8, 2010 for alleged violation of MOWOR 11.3 and MOWOR 6.3.1 in connection with charges of failure to comply with track and time limits at approximately 1040 hours on or near Mile Post 76.044 Bingen, Washington the Fallbridge Subdivision, while hyrailing in Vehicle 22750 between Cooks and Lyle, Washington while working as a track inspector at Bingen, Washington on duty at 0700 hours was arbitrary, capricious and in violation of the Agreement (System File S-P-1549-G/11-11-0029 BNR).
- 2) The claim\* as presented by Vice General Chairman M. Garisto on October 6, 2010 to Mr. D. Jones, Division Manager-Northwest Division, shall be allowed as presented because said claim was not disallowed by Mr. D. Jones in accordance with Rule 42A.
- 3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Claimant C. Van Ness shall now receive the remedy prescribed by the parties in Rule 40G.

## FINDINGS:

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

Public Law Board 7702 has jurisdiction over the parties and the dispute involved herein.

On August 2, 2010, Claimant was working as a Track Inspector near Milepost (MP) 76 on the Fallbridge Subdivision. Claimant was inspecting track in an eastward direction at Bingen when the violation occurred. Claimant had requested, and was granted track authority west of Bingen. Claimant had also requested, and was granted track authority east of Bingen. But Claimant did not request track authority between the switches at Bingen. When Claimant hauled past the switch at west Bingen, he found himself occupying the main track without authority, a serious rule violation in this industry.

When Claimant exceeded his authority, an alarm was sent to the Network Operations Center (NOC) in Fort Worth, Texas. The Pasco West dispatcher received the alarm and contacted Claimant via radio. The dispatcher informed Claimant that he was showing outside of his authority limits. Claimant responded by indicating that he had track authority. The dispatcher told him that he did not have any authority in that area, to stop and he would talk the Chief Dispatcher.

At roughly 10:47 a.m., Claimant's supervisor, Roadmaster Scott Frederick was notified by Chief Dispatcher II, Scott Unick, that there was a possible authority violation in the Bingen area at MP 76.044. Mr. Frederick contacted Trainmaster Kyle Wilting out of Wishram, Washington to receive the Claimant until while Frederick was en route. Wilting informed Frederick that he was with Claimant securing a written statement.

In the interim, Frederick requested that tape recordings be pulled from the NOC in Fort Worth. After listening to the tapes, Mr. Frederick ran the Event Log of the vehicle (22750) that Claimant was operating. The vehicle Claimant was operating was equipped with a GPS tracking system used as a safety overlay to prevent authority violations. The Event Log conclusively demonstrated that Claimant was outside of his authority limits at Bingen. In fact, the statement Claimant submitted to Trainmaster Wilting confirmed that fact:

Claimant was dismissed for violating Maintenance of Way Operating Rules (MOWORs) 11.3 and 6.3.1.

In this instant case, the Organization has invoked a procedural violation. The Organization has alleged that the Carrier has violated Rule 42. While the Carrier argues this case should be decided on the merits.

Authority violations are among the most egregious in regards to employee safety. The Carrier argues that the Claimant violated one of the more critical rules of railroad work when he failed to have proper authority while occupying a main track.

In this instant case, the default issue, argued within, has been previously and appropriately discussed and decided in a Third Division Award, 36687; Dana Eischen. The reasoning from that Third Division Award will be used, by reference, determining that this instant case should be decided only on the merits.

Here, the Carrier has presented sufficient evidence to prove its case. That evidence was based on the Claimant's own written statement, which was unrefuted and corroborated by the event log of the GPS Unit, whereby, the Claimant admitted he did in fact exceed his authority and was outside his authority limits. Also, unrefuted testimony from the Roadmaster that the Claimant's admissions violated both 11.3, Fouling the Track and 6.3.1, Main Track Authorization.

Additionally, this was the Claimant's second serious rule violation in a 45 day period.

Based on the entire record, it is clear that the Claimant failed to have proper authority while occupying a main track thus violating MOWOR 11.3 and 6.3.1.

This claim is denied.

AWARD:

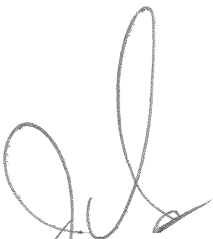
The Claim is hereby denied.



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Marc A. Winters  
Neutral Member

Dated: November 27, 2015



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Joseph Heenan  
Carrier Member



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Kevin Evanski  
Organization Member