

In the Matter of the Arbitration Between:
BURLINGTON NORTHERN SANTA FE

and

Case No. 1
Claim of R. Hosteen
Level S 30-Day Record
Suspension - Failure
to Stay within Track
and Time Authority
Limits

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION

STATEMENT OF CLAIM: Claim on behalf of Trackman R. Hosteen requesting removal of the Level S 30-day record suspension and three-year review period from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant an employee, within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein.

The Carrier and Organization are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Maintenance of Way craft. The Board makes the following additional findings.

Claimant has worked for the Carrier since July 26, 1979. On May 18, 2011, Claimant was assigned to assist Track Supervisor Steve Dulmage in a hy-rail vehicle. He was relatively unfamiliar with the territory. Mr. Dulmage secured Track Authority on Main Track 3 with a laptop computer but, after a certain amount of time, the HLCS audible alarm system ceased to function and they stopped the vehicle. After a job briefing was held, Mr. Dulmage secured track and time for them to proceed to the next block. They re-entered the hy-rail vehicle and headed eastbound on the Seligman Subdivision, with Claimant as a passenger. At approximately 1:40 p.m., Claimant noticed that the "exceed" changed from yellow to red and then the audible alarm went off again. When the crew realized that they had exceeded their authority, they backed up inside their limits.

The Carrier convened an investigation at which the above evidence was adduced. Based on the record, the Carrier found Claimant in violation of MWOR Rules 1.1.2 (Alert and Attentive) and 6.3.1 [Main Track Authorization (Occupying or Fouling Track)] and assessed him a 30-day record suspension.

The Organization protested the discipline, which the Carrier denied on appeal. The Claim was progressed on the property on an expedited basis, up to and including the highest designated official, but without resolution. The Organization invoked arbitration, and the dispute was presented to this Board for resolution.

POSITIONS OF THE PARTIES: **The Carrier** argues that it met its burdens to prove Claimant's violations of the Rules and the appropriateness of the penalty. It asserts that the facts and testimony presented at the investigation make it clear that Claimant, as part of a two-man work crew, exceeded the track and time authority they had been given and, thereby violated Rules 1.1.2 and 6.3.1. It points out that Claimant admitted at hearing that he had not complied with the Rules. BNSF maintains that just because no injury resulted from the violations does not relieve Claimant of his responsibility. It contends that the gravity of the situation cannot be understated and that the rule violation was of a serious nature.

BNSF argues that Claimant's conduct constituted a Level S violation of PEPA and that the penalty assessed was appropriate under that program. As to the penalty, BNSF argues that it gave due consideration to Claimant's personal record and the fact that he had not been discipline-free for the preceding five years, which meant that he was not eligible for Alternative Handling. The Carrier asserts that the discipline imposed is appropriate and that leniency is not in the Board's authority.

The Carrier urges that the claim be denied as without merit.

The Organization argues that the Carrier failed to prove the violations and failed to establish the appropriateness of the penalty. It points to evidence that Track Supervisor Dulmage was in control of the vehicle and operated the computer. It maintains that Claimant, who was new to the territory, was still fastening his seatbelt and putting on his PPE gear and had only a ten-second window to warn about the encroaching signal. It asserts that, when addressing performance issues, it is more appropriate to correct the employee through non-disciplinary actions, such as coaching, counseling and training. BMWWE contends that such an approach gives the employee the opportunity to improve. It notes that the hy-rail vehicle has operator controls on only the Operator's side of the vehicle and maintains that subjecting the operator of the vehicle (Mr. Dulmage) and the passenger (Claimant) with the same level of

discipline is fundamentally unfair.¹ BMWE points out, in addition, that Claimant is 50 years old and has 27 years of service. It asserts that, for the foregoing reasons, the discipline imposed is arbitrary, excessive and unwarranted and a flagrant abuse of the Rules.

The Organization urges that the Claim be sustained, that Claimant's Level S 30-day record suspension and three-year review period be removed from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

DISCUSSION AND ANALYSIS: Rule 1.1.2 requires employees to "be careful to prevent injuring themselves or others" and that they "be alert and attentive when performing their duties." Similarly, Rule 6.3.1 requires that, "[w]hen the work group consists of two or more employees, at least one other employee (rules qualified, if available) in that work group must read and understand the authority prior to equipment or employees fouling the track."

The Board recognizes the general obligation under the Rules for all members of a crew to ensure compliance with limits on track authority and further recognizes Claimant's obligation to do so in the circumstances of this case. The evidence is sufficient to persuade the Board that Claimant and his Track Supervisor exceeded their track authority, thereby violating the Rules as charged. Claimant admits that he failed to carry out his responsibilities in that regard, thereby violating the rules. The short period of time the crew had to act might mitigate, but does not excuse, the violation. However, it is undisputed that Claimant was new to the territory and was riding as a passenger with Track Supervisor Dulmage. The Board also notes that Mr. Dulmage specifically accepted full responsibility for the violations and was disciplined for his conduct.² While not conclusive, Mr. Dulmage's admission is entitled to weight; and the evidence establishes his primary responsibility for the violation.

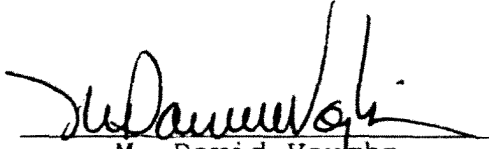
Given the nature and circumstances of Claimant's violations, the Board concludes that the imposition of a Level S 30-day record suspension and three-year review period was excessive. The Penalty shall be reduced. The Award so reflects the Board's determinations as to the appropriate level of discipline.

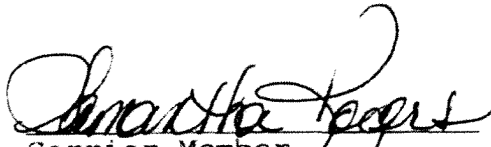
¹The discipline assessed against Mr. Dulmage was not the same: in addition to the Record Suspension, Dulmage received a one-year restriction of Track Supervisor and Foreman.

²His discipline is Case No. 2 before this Board.

AWARD: The claim is sustained in part and denied in part. The Carrier met its burden to prove Claimant guilty of the charges. However, given Claimant's inexperience with the territory, situation as a passenger, the short time he had to respond and the Track Supervisor's acceptance of full responsibility, the penalty assessed is reduced from a Level S 30-day record suspension to a Formal Reprimand and a 12 month review period, dating from the start of the previous three-year review period, i.e., July 5, 2011. Claimant's records shall be amended to reflect the change.

Dated this 27 day of MARCH, 2013.


M. David Vaughn,
Neutral Member


Carrier Member
Ms. Samantha Rogers


Employee Member
Mr. David Tanner