

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

and

Case No. 2  
**Claim of S. E. Dulmage**  
Level S 30-Day Record  
Suspension - Failure  
to Stay within Track  
and Time Authority  
Limits

**BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES DIVISION**

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**STATEMENT OF CLAIM:** Claim on behalf of Track Supervisor S. E. Dulmage requesting removal of a Level S 30-day record suspension and one-year restriction of Track Supervisor and Foreman rights 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 December 6, 1993. On May 18, 2011, Claimant was assigned as a Track Supervisor, assisted by Trackman R. Hosteen, in a hy-rail vehicle. Claimant 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 as a warning device and they stopped the vehicle. After a job briefing was held, Claimant 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. At approximately 1:40 p.m., the "exceed" changed from yellow to red and then the audible alarm went off again. When they realized that they had exceeded their authority, they backed up into 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 group, traveled outside the track and time authority they had been given and, therefore, violated Rules 1.1.2 and 6.3.1. It points out that Claimant took "full responsibility" for the incident because he was in control of the truck, operated the computer and called the track and time. 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.

With respect to the penalty, BNSF argues that it gave due consideration to Claimant's personal record and the fact that he was not discipline-free in 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 discretion.

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

The Organization acknowledges that Claimant was responsible for the situation. However, it maintains that the HLCS gives to its users a dangerous and negligent sense of security. In addition, it points out that, during the ex parte field investigation, the audible alarm did not come back on until the vehicle was at least 170 feet out of limits. BMWE asserts that, when addressing performance issues, it is more appropriate to correct the employee through non-disciplinary actions, such as coaching, counseling and training. It points out that Claimant, who is 43 years old and has 15 years of service, has a long and productive career ahead of him. It asserts, therefore, that the discipline 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 one-year restriction of Track Supervisor and Foreman rights be removed from his record with seniority, vacation and all other rights unimpaired, and that he be made whole for all time lost.

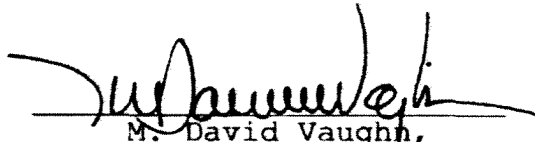
**DISCUSSION AND ANALYSIS:** Rule 1.1.2 requires employees to "be careful to prevent injuring themselves or others" and "must be alert and attentive when performing their duties." Similarly, Rule 6.3.1 requires that, "[w]hen the work group consists of two or more employees, at least one other employee (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 obligation under the Rules for all members of a crew to ensure compliance with limits on track authority. The evidence is sufficient to persuade the Board that Claimant and his Trackman exceeded their track authority, thereby violating the Rules as charged. Claimant was the senior and far more familiar with the territory. He admitted doing so and specifically accepted full responsibility for the violations.

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 appropriate. The Award so reflects.

**AWARD:** The Claim is denied. The Carrier met its burdens to prove Claimant guilty of the charges and to prove his Level S 30-day record suspension and three-year review period was within the range of reasonableness. The Award so reflects.

Dated this 18 day of MARCH, 2013.

  
M. David Vaughn,  
Neutral Member

  
Carrier Member  
Ms. Samantha Rogers

  
Employee Member  
Mr. David Tanner