

Award No. 5
Case No. 5
NMB Case No. PLB-07602-000005

PUBLIC LAW BOARD NO. 7602

Parties to the Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY	)
EMPLOYES DIVISION—IBT	)
	)
v.	)
	)
BNSF RAILWAY COMPANY	)

Carrier File No. 10-12-0139
Organization File No. C-12-D040-6

Claimant — Daniel J. Cuhel

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The discipline [Level S thirty (30) day record suspension and a one (1) year review period] imposed upon Mr. Daniel J. Cuhel by letter dated November 21, 2011, for alleged violation of MOWOR 6.3.1 Main Track Authorization in connection with charges of his failure to operate within the limits of authority at approximately 0820 hours on September 28, 2011, at or near MP 304.1 on the Ottumwa Subdivision.**
- 2. As a consequence of the violation referred to in Part (1)above, Claimant Daniel J. Cuhel shall now receive the remedy prescribed by the parties in Rule 40(G).**

BACKGROUND:

The Claimant was first hired by the Carrier in July 1993. He was on extended military leave from October 2006 until February 2011 after being called up for active duty. He was assessed a Level S thirty-day record suspension with a one-year review period for operating out of the limits of his authority on September 28, 2011. He had no prior discipline on his record. The evidence in the record is that on the date in question, the Claimant, who is a welding foreman, and Jared Moore, his MOW Foreman, were working on an emergency basis in and around MP 304 on the Ottumwa Subdivision; it was not territory they ordinarily worked or were familiar with. During the course of the morning, Moore was given two to three different limits of authority, which he passed on to the Claimant. According to Moore's testimony, he was "running around, trying to do a bunch of jobs at one time." The Claimant got into Moore's truck, where they discussed Claimant's getting out and starting work, and Claimant wrote down the track and time limits. Moore acknowledged that he did not specify to the Claimant exactly where he should start. The Claimant stated that he got permission from Moore to start working. The timetable he consulted indicated that there were two main tracks and indicated that facing east, Main 2 should be on the right. Claimant got out of his truck to examine the tracks before setting out on what he thought was the correct one. Instead, in a matter of minutes, an out-of-limits alarm sounded. Claimant got a call from a Dispatcher. He testified that he had had prior failures on that system before, where he has been on the right track and the out-of-limits alarm has gone off. Nonetheless, he immediately proceeded back to the crossing he had started from, where he met up with the Roadmaster. They were eventually joined by Foreman Moore. The three men all testified that the track situation at that location was confusing, even to those who normally worked there, and that initially, they did not know what the problem was. In addition, neither the Claimant nor his Foreman had a play book to assist them in reading the tracks and determining the limits of their authority properly. At the conclusion of the investigation, the Carrier found that Claimant failed to operate within the limits of his authority on September 28, 2011, at MP 304.1, at approximately 0820 hours.

FINDINGS AND OPINION:

The Public Law Board, upon the whole record and all the evidence, finds that the carrier and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Public Law Board has jurisdiction over the dispute involved herein.

The Organization contends that the discipline imposed was excessive. The Claimant was trying to work in a safe manner under trying circumstances, at a confusing location and with inadequate information provided to him by the Carrier. The Roadmaster familiar with the location acknowledged that it is confusing, and it took him, the Foreman and the Claimant fifteen minutes just to determine how and where the Claimant had gone out of limits. The Organization points out that Claimant would not have been assessed any discipline under the prior Alternative Handling or SIAP process. This is not a case of carelessness on the part of the employee. Claimant admits his mistake and has taken responsibility for it, which should have some merit.

It is undisputed that the Claimant did operate out of his limits at the date, time and location at issue here. It is also undisputed that he was operating on an emergency basis in unfamiliar territory and that he made good faith efforts to stay within the limits of his authority. Unfortunately, he made an honest error of judgment as to which track was which, and that mistake put him out of his limits. Operating out of the limits of one's authority is a serious matter: the Carrier's safe operations depend on each of its many crews operating within their assigned limits, in order to avoid the accidents and collisions that can occur when there are two crews on the same track, or a maintenance crew on a track that has been cleared for a train to pass over. To the extent that the Claimant was unfamiliar with the territory and was unsure which track was which, the more prudent course would have been for him to have contacted his Foreman or the Roadmaster to double check before heading down any track. Despite his good intentions, the Claimant has a share of the responsibility for having gone out of limits, and that provides the Carrier cause for discipline of some sort. The Organization contends that the discipline assessed here—a thirty-day Level S record suspension and one year review period—is too harsh. Given the potential seriousness

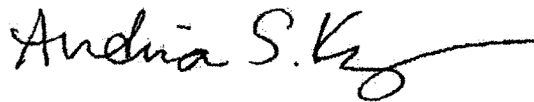
of operating out of one's authority, the Board will not second-guess the Carrier's determination of the appropriate penalty in this instance.

AWARD

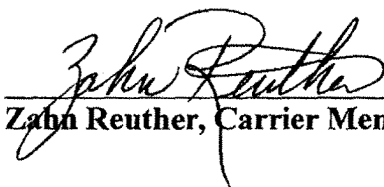
Claim denied.

ORDER

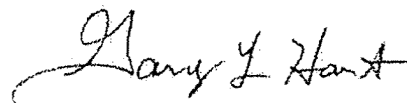
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Andria S. Knapp, Neutral Member



Zahn Reuther, Carrier Member



Gary Hart, Organization Member

April 29, 2013

Date