

**BEFORE
PUBLIC LAW BOARD NO. 7499
CASE NO. 10
AWARD NO. 10
NMB Subject Code: 106**

BROTHERHOOD OF RAILROAD SIGNALMEN)	
(Organization file: 11-003-BNSF-154-TC))	PARTIES TO THE
vs.)	DISPUTE
BNSF RAILWAY COMPANY)	
(Carrier file: 35-11-0022))	

STATEMENT OF CLAIM:

“Carrier should immediately clear Mr. Laney's personal record of any reference to the discipline or this event.”

FINDINGS:

The Board, upon consideration of the entire record and evidence herein, finds that the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated June 22, 2011 that this Board has jurisdiction over the dispute involved herein, and that the parties were provided due notice of the instant proceedings.

After a thorough review of the record, the Board concludes that on October 27, 2010, while working as a signal maintainer at New Rockford, North Dakota, the Claimant was hrrailing on his territory cleaning signal lenses. While doing so, the hrrail limits compliance system (HLCS) unit on his truck transmitted data to the Carrier's computer system. A remote audit performed on these logs led the company to believe that the Claimant had operated his hrrail vehicle in excess of the maximum speed allowed for this class of vehicle. As a result, the Carrier held an investigation, after agreed-upon postponements, on November 23, 2010. The Carrier assessed a 10-day record suspension as a result of this investigation. The Organization appealed this discipline through the proper process under the Collective Bargaining Agreement between the parties. The parties have been unable to resolve this issue and after an on-property conference, they have placed the issue before this Board for adjudication.

The BNSF Maintenance of Way Operating Rules and Instructions in question are “MOWOR 6.50.1 Maximum Authorized Speed” which states that the maximum authorized speed for the vehicle in question was 45 mph.

Organization Argument:

The Organization argues that the Carrier has failed to meet its burden of proof since they did not have any reliable evidence that the Claimant exceeded 45 mph. They point out that the Carrier's only evidence was an incomplete and unreliable GPS tracking event log which purported to show speeds of up to 51 mph during two brief moments.

They point to a series of exhibits, entered into evidence during the investigation from a variety of individuals, claiming that there were ongoing problems and inaccuracies with the GPS tracking system.

They also introduced evidence, through the Claimant, that a local sheriff clocked the hyrail vehicle in question with a calibrated radar gun. This evidence indicated that the hyrail's speedometer was off by 3 mph (the vehicle was apparently actually going 3 mph faster than the speedometer indicated).

They further point out that the vehicle was on a downgrade and there were strong winds, therefore it is possible that the vehicle went slightly faster due to these environmental conditions, not due to the actions of the Claimant.

The Organization also objects to not having anyone present from the Carrier during the investigation that had expertise in translating the data from the GPS system. This objection includes not having the remote auditor, who originally alleged that the Claimant was speeding, present during the investigation for cross examination.

In summary, they say that the Carrier has not met its burden of proof and, therefore, no discipline can stand.

Carrier Argument:

The Carrier says that the evidence of problems with the GPS system, provided by the Organization, were connection failures in 2009. They say that there was no evidence of any problem with the unit 19 months later.

They say that there were no open tickets for this vehicle on the date in question. They say that trouble tickets are not closed until the reported problem is corrected and the system released in working order. They say that this means that any supposed previously reported malfunctions were corrected prior to October of 2010.

With respect to gaps in data introduced in evidence, they say that lack of data while the vehicle was stopped does not mean that the speed of the vehicle when moving was in question.

With respect to the environmental conditions in question, they say that the Claimant had a duty to obey the speed limit, regardless of the environmental conditions.

They say that the speedometer test performed by the local sheriff is not conclusive and that it was without documentation.

Result:

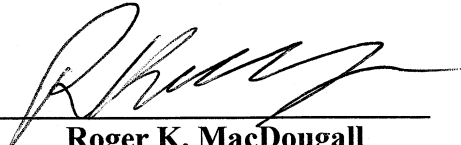
With respect to the Organization's argument that the hyrail was going downhill and had a wind behind it, this Board is not convinced that this would exonerate the Claimant. Locomotive engineers and hyrail operators are both expected to manage their vehicles in such a way as to avoid speeding, regardless of environmental conditions. This is not a tenable argument.

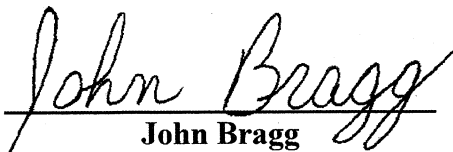
While there may be no reason to have the GPS auditor present during the investigation, the evidence before this Board can be described as equivocal at best. It is clear from the testimony during the investigation that the Carrier's witness is not an expert in either the operation or the interpretation of data from this GPS system. It is also clear that the Carrier had had problems with the GPS system at some point in time. While the Carrier argues that these problems had been fixed, there are still unanswered questions about the accuracy of the GPS system data. It is evident that there are gaps in the data. It is not clear whether these gaps go to the accuracy of the system in general. By design, GPS systems are meant to fix the location of the unit in space. There is considerable evidence, in this case, that the GPS accuracy is less than 15 feet. There was some evidence introduced that the accuracy could be less than five times this amount, due to the dials on the system, and therefore perhaps indicating inaccuracies as large as 75 feet. Without the benefit of expert evidence of someone knowledgeable in the operation of this particular system, it is not possible for this Board to be convinced that this particular system can be used to accurately calculate the speed of a vehicle, rather than simply location, to a sufficient level to assess discipline. Radar technology used by police forces (and indeed Carrier transportation officers) has routinely been tested in court as to accuracy and must be calibrated on a regular basis. There is no such evidence before this Board that this particular GPS system at this particular location is sufficiently accurate to determine speed to within a few percentage points.

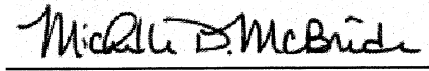
As a result, this board concludes that The Carrier has failed to meet its burden of proof in this particular case. That is not to say that the GPS system is, in fact, inaccurate. It merely means that the Carrier has not introduced sufficient evidence, in this case, to convince this Board.

AWARD

The Claim is sustained.


Roger K. MacDougall
Chair and Neutral Member


John Bragg
Vice-President
Employee Member


Michelle McBride
Director Labor Relations
Carrier Member

Dated: 6/29/12

At: Chicago, IL