

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32051
Docket No. MW-32725
97-3-96-3-28**

The Third Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
((Eastern Lines)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The thirty-one (31) days of suspension imposed upon Machine Operator Helper J. T. Finch for alleged violation of Rules 16.1(M) and 16.4(M) 2 on November 21, 1994 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File MW-95-49/MW D95-5 SPE).**
- (2) The Agreement was further violated when the Carrier failed to give written reasons for the denial of the claim as required by the Agreement.**
- (3) As a consequence of the violations referred to in Parts (1) and/or (2) above, the Claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered and properly credited for all benefits in connection therewith.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers 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 Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant J. T. Finch has 15 years of service with the Carrier. He was assessed a 30 day suspension for occupying track without authority.

On November 21, 1994, while working as a Machine Operator Helper on the 164 RD brush cutter, Claimant Finch was assigned to cut and clear brush from the right of way. At some time during the morning of November 21, Claimant Finch requested working time in the Schriever and Ursa blocks from SP Dispatcher 24.

A track block is a part of the track control system. It is a segment of track which begins at a switch or signal which extends to the next switch or signal. The block or segment of track is designated by name or location and is used by employees to obtain time to work within the confines of the blocks or to permit employees and/or equipment to travel through the blocks without jeopardizing the safety of the employees, or jeopardizing the property or equipment.

The only relevant evidence in the record is a transcript of the conversation between Claimant Finch and SP Dispatcher 24 which in relevant part, is as follows:

"Finch: * * I would like to request some working time in the Schriever and Ursa blocks.

* * *

Dispatcher: * * I'll give you the Schriever and Ursa Block until 12:30, over.

Finch: * * * I understand that I've been granted. * * * Maintenance of Way in two blocks Schriever and Ursa until 12:30 p.m.

Dispatcher: * * * I just wanted to understand that I'll give you Schriever and Ursa till 1:40--til 12:45. Let me give it to you. 164 RD Machine Operator Finch after the arrival of the 7273 East, joint with trains and Maintenance of Way, I'm granting you working time in two blocks Schriever and Raceland until 12:45--over. 164 RD did you copy? (Emphasis added).

Finch: * * I understand I have been granted joint working time joint with trains and other maintenance of way after the arrival of 7273 East in two blocks Schriever and Ursa until 12:30 p.m. * *.

Dispatcher: Until 12:45 p.m., over.

Finch: That's 12:45 p.m. * *.

Dispatcher: 164 RD that is correct. And I need for you to be clear and released at that time.

Finch: * * I will be clear at 12:45.

* * *

Finch: 164 RD with Machine Operator Finch releasing two blocks Ursa and Schriever, over.

* * *

Dispatcher: What blocks are you releasing, over?

Finch: * * 164 RD Machine Operator Finch releasing two blocks Ursa and Schriever, over.

Dispatcher: No, sir. You released Ursa a long time ago.

* * *

Dispatcher: * * Are you releasing two blocks Schriever and Raceland?

Finch: Yes * * that is correct.

Dispatcher: You did not say Schriever and Raceland, you said Schriever and Ursa. So let's try it one more time please, over.

Finch: * * Finch releasing blocks Schriever and Ursa, over.

Dispatcher: I thought you were releasing Schriever and Raceland.

* * *

Dispatcher: * * Are you releasing the Schriever and Raceland, over.

Finch: No, * * Schriever and Ursa, over.

* * *

Dispatcher: * * When are you going to be releasing that Raceland block?

Finch: You never gave me the Raceland block--you gave 281 the Raceland block, over.

Dispatcher: That is not correct * * at 12:37 a.m. I gave you the Raceland block also. I gave you an extension in the Schriever block and the Raceland block at 12:37 a.m. * *.

* * *

Dispatcher: * * do you need the Raceland block, over?

Finch: No. * *

Dispatcher: * * did you copy the information down on the Raceland block?

Finch: No. * * I copied down Ursa and Schriever, that's what I asked you for. * **

The record establishes that neither Claimant Finch nor SP Dispatcher 24 were listening to each other. Finch sought approval for working time in the Schriever and Ursa blocks from SP Dispatcher 24. After SP Dispatcher 24 stated that she was giving Claimant Finch time in the Schriever and Ursa blocks, she said that she was granting him time "until 12:45" in the "Schriever and Raceland" blocks. Although SP Dispatcher 24 asked Claimant Finch "did you copy" he said that he understood he had "been granted joint working time * * in two blocks, Schriever and Ursa until 12:30 p.m. * *." The Dispatcher then stated "until 12:45 p.m. * *."

Thus, the Dispatcher granted authorization for the Schriever and Raceland blocks which were not requested by Claimant Finch. When Claimant Finch stated "Schriever and Ursa until 12:30 p.m.", the Dispatcher's response was "until 12:45 p.m." Claimant Finch reasonably but mistakenly assumed that the Dispatcher's response of "until 12:45" was approval of his statement "Schriever and Ursa until 12:30 p.m."

The Board is of the view that both Claimant and SP Dispatcher 24 were negligent in failing to listen to each other. SP Dispatcher 24 shares equal responsibility with Claimant Finch in causing Claimant Finch to occupy track without authority. As a result of their negligence, they jeopardized the safety of other employees and created the potential for serious property damage. Accordingly, it is the judgment of the Board, that Claimant Finch is not to receive any greater discipline than the discipline, if any, that was imposed against SP Dispatcher 24.

AWARD

Claim sustained in accordance with the Findings.

Form 1
Page 6

Award No. 32051
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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 10th day of June 1997.