

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37272
Docket No. MW-37654
04-3-02-3-787

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Burlington Northern and Santa Fe Railway Company
(former Burlington Northern Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [thirty (30) day record suspension and a probation period of one (1) year] imposed on September 8, 2000 upon Mr. R. J. Julius in connection with alleged violation of Burlington Northern Santa Fe Railway Maintenance of Way Operating Rules 1.3.1 and Maintenance of Way Safety Rule S-13.1.1 while assigned at Gillette, Wyoming on July 28, 2000 was unwarranted, on the basis of unproven charges and in violation of the Agreement [System File C-01-S-090-3/10-01-0030-D(MW) BNR].
- (2) The claim* as presented by Vice General Chairman R. I. Nickens to Superintendent T. Godsil on September 25, 2000 shall be allowed as presented because said claim was not disallowed in accordance with Rule 42.
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, Mr. R. J. Juilus shall now receive the remedy prescribed by the parties in Rule 40(G).

* The initial letter of claim will be reproduced within our initial submission.”

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.

Late in the morning on July 28, 2000, the Claimant, a Maintenance Gang Foreman with more than 20 years' service, crossed track near MP10 in front of a train that was about to stop. The train, which had numerous cars, pulled past the Claimant and stopped. Shortly thereafter, the Claimant, without notifying the train crew, crossed back across the track by crawling between two cars of the train. It took him about ten to 15 seconds to cross. According to the Claimant, he "knew" that the train would be stopping long enough to allow him to cross safely.

The Claimant was seen crossing through the train, and the incident was reported to management. Upon questioning, the Claimant admitted that he had crawled through the train without notifying the crew.

By letter dated August 4 the Carrier notified the Claimant of an Investigation into his responsibility, if any, in connection with his alleged failure to notify the train crew when he went between cars on July 28, 2000. By letter dated August 8, 2000 the Organization complained that the Notice of Investigation was too vague, and requested that the Investigation be canceled. After denying the Organization's request to cancel the Investigation, the Carrier conducted an Investigation on August 11, 2000. In a letter dated September 8, 2000 the Carrier notified the Claimant that he was being placed on probation for one year and was being issued a 30-day record suspension for violating the Carrier's Maintenance of Way Operating

Rule 1.3.1 and Maintenance of Way Safety Rule S-13.1.1, which provides in pertinent part:

“When a crew member is required to go between or work on the end of equipment, he/she must notify the engineer and all other crew members who could affect movement of the equipment by radio or hand signal.”

The Organization appealed the discipline in a letter dated September 25, 2000. In response, the Carrier denied the appeal in a certified letter dated November 7 that was not mailed to the Organization until November 21, 2000.

As a threshold matter, the Organization contends that its claim should be granted because the Carrier failed to mail its denial of the Organization’s original appeal until more than 60 days after receipt of the appeal, in violation of Rule 42. The record, however, shows otherwise. The Carrier’s denial letter is dated November 7 and the receipt form shows that it was mailed on November 21, 2000. Because the Carrier received the Organization’s appeal on September 27, its mailing of its denial on November 21, 2000 was within the 60-day time limitation.

The Organization also claims that, in violation of Rule 40(C) which requires that the Carrier’s Notice of Investigation “must specify the charges for which investigation is being held,” the Carrier failed to provide the Claimant with such specific notice. Contrary to the Organization’s contention, however, the Board finds that the notice adequately notified the Claimant that he was being charged with moving between train cars without notifying the train crew.

On the merits, the Organization argues that, because the Claimant was unaware of Safety Rule S-13.1.1, had received no training with respect to the Rule, and moved safely between the train cars, he should not have been disciplined. The Board disagrees. Pursuant to Maintenance of Way Operating Rule 1.3.1, the Claimant was obligated to have a copy of, be familiar with, and comply with all Safety Rules, including Safety Rule S-13.1.1. Moreover, because the Claimant admittedly violated Safety Rule S-13.1.1, the Board must reject the Organization’s argument that he “safely” went between the two train cars. The fact that he failed to notify the train crew that he was crossing between the cars made his actions

inherently unsafe. Indeed, his crossing between the cars without notifying the train crew subjected him to possible serious injury or death.

Because the 30-day record suspension and one-year probation appropriately reflected the seriousness of the Rule violation and the Claimant's seniority and prior record, the 30-day record suspension and one-year probation were not unduly harsh or excessive.

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.

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

Dated at Chicago, Illinois, this 5th day of November 2004.