

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42121
Docket No. SG-41889
15-3-NRAB-00003-120141**

The Third Division consisted of the regular members and in addition Referee Andria S. Knapp when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(BNSF Railway Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of A T. Stark, for his record to be cleared of any mention of the discipline issued in a letter dated August 12, 2010, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of a Level S (serious) 30-day record suspension with a one year probation period without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation held on July 21, 2010. Carrier's File No. 35-11-0006. General Chairman's File No. 10-041-BNSF-20-C. BRS File Case No. 14593-BNSF.”

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.

At the time this dispute developed, the Claimant was a Signal Maintainer headquartered in Albia, Iowa. On June 10, 2011, he was operating a hi-rail vehicle on the Ottumwa Subdivision. He contacted the Train Dispatcher in order to obtain track authority to perform work on a trouble call. After confirming with the Train Dispatcher that Train 4110 was past his location, he was issued a track authority that required him to contact the crew on Train 4110 to inform them that he would be occupying the track behind them. The Claimant contacted the crew of Train 4110. He told them that he had been granted “track and time” behind them and asked that they notify him if they needed to make a reverse move. In the end, however, the Claimant never actually occupied or fouled the track that he had been given authority to occupy. Before doing so, he realized that the work he needed to perform was outside the limits of the track authority that he had been granted, and he again contacted the Train Dispatcher to obtain the correct track authority. During an audit, the Carrier learned that the Claimant had failed to use Train 4110’s engine initials when he contacted its crew and that he did not verbally ascertain Train 4110’s milepost location when he spoke to them. The Carrier charged the Claimant with violating MOW Operating Rule 6.2.1, Train Location, and Rule 1.3, Rules. Following the formal Investigation that was held on July 21, 2010, he was found guilty of the charges and was assessed a Level S (Serious), 30-day record suspension with a one-year probation period commencing August 12, 2010.

MOW Operating Rule 6.2.1, Train Location, states:

“MW employees must not receive authority behind a train(s) until the train(s) is passing, or has passed the location where the track will be occupied or fouled. After receiving authority behind a train(s) and before occupying or fouling the track, the employee must establish direct radio contact with a crew member of the train(s) and verbally:

- * Confirm train(s) identity by engine initials and number
- * Determine train(s) location by MP

The employee must use this information to verify the train(s) has passed the location prior to occupying or fouling the track.”

There is no dispute between the Parties that Rule 6.2.1 is a safety measure that was put in place to minimize the possibility of on-track collisions. This dispute relates

to how the Carrier has interpreted and applied the Rule in this case. According to the Carrier, there is no dispute regarding the content of the Claimant's radio conversation with the crew of Train 4110 – he did not identify the train by its engine initials and number, nor did he ascertain the train's location by its MP location. The evidence establishes that the Claimant violated Rule 6.2.1. The Rule is a critical Safety Rule and any violations are serious; a Level S record suspension coupled with a probationary period were appropriate. The Organization contends that the Claimant did not, and could not have violated Rule 6.2.1 because he never occupied or fouled the track that he had track authority for. The Organization also notes that it was only the third day that the Claimant was on his position and the Carrier had not properly trained him. Moreover, the Carrier has since changed the wording of Rule 6.2.1 in order to eliminate the confusion that it previously caused.

Rule 6.2.1 establishes a safety protocol that is critical to safe on-track operations. As the Carrier notes, any employee who occupies track without verifying the milepost location of nearby trains and the train's identity has committed a serious safety lapse. The issue is serious enough that the Carrier's Rules dictate the exact dialogue that must take place between the train crew and employees wishing to occupy track. The Board recognizes the importance of strictly enforcing Safety Rules and the Claimant was technically in violation of Rule 6.2.1 when he communicated with the crew of Train 4110 without determining the engine initials and number or the train's location by milepost. That being said, the Claimant did not actually use the track authority that he had been given relative to Train 4110, and he did not occupy or foul the track pursuant to that authority. Under the circumstances, assessing a Level S infraction is harsh and excessive. The Carrier had cause to discipline the Claimant, but pursuant to the principles of progressive discipline, he should have been assessed discipline for a Non-Serious Rule Violation.

AWARD

Claim sustained in accordance with the Findings.

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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 13th day of July 2015.