

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42122
Docket No. SG-41935
15-3-NRAB-00003-120216**

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 C. R. Curlee, for the Claimant's personal record to be cleared of any reference to the discipline issued or to this event, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued a Level S (serious), 30-day record suspension and a one year review period against the Claimant without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on September 9, 2010. Carrier's File No. 35-11-0012. General Chairman's File No. 10-046-BNSF-121-T. BRS File Case No. 14630-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.

The Claimant was working as a Signal Maintainer in Joshua, Texas, when this dispute arose. On August 14, 2010, he was called to investigate trouble with the signals at Crowley North. He needed to obtain track and time authority behind BNSF 657 South, which he did. However, on August 17, 2010, during a remote audit of radio transmissions, a Manager of Operating Practices concluded that the Claimant had failed to properly determine the mile post location of Train BNSF 657 before fouling the track. By letter dated August 26, 2010, the Carrier sent the Claimant a Notice of Investigation.

During the September 9, 2010 Investigation, the Claimant acknowledged that he did not obtain the milepost location of Train BNSF 657 verbally from its crew and explained how he determined the train's milepost location. He was in radio communication with the crew, who informed him that they were in the siding at Crowley. As for determining the exact milepost, the Claimant explained:

“Q.: And . . . what was the mile post correspondence?

A.: I know for one they were past mile post 334.2 at the north end of Crowley, they were clear of that track.

Q.: Did the, did the train crew state that?

A.: They, they stated that they were in the siding at Crowley clear of the north end. I asked them if they were clear of all limits at the north end of Crowley and they stated they were in the siding and I can clearly see on the bungalow mile post 334.2 at the north end of Crowley and there are several other ways to ascertain mile post.”

In addition to the Claimant's testimony, one of his Supervisors testified:

“Q.: . . . If the train was at the south end of Crowley and you knew the mile post location of the south end of Crowley and if the train told you they were located at the south end of Crowley, could you have then determined the mile post location of that train?

A.: Me personally? . . . I could have, yes.

Q.: So it is possible to determine the location, mile post location of the train without actually having the train stipulate or verbally

transmit an actual mile post location if he indeed gives you a physical location other than the mile post?

A.: I can say if I was given a location, in most cases I could determine that location by myself.”

One of the Carrier’s Safety Assistants testified to his opinion that the Rule as then written was confusing to employees and that it could be worded more clearly:

“Nowhere in the rule does it require that the mile post be stated, yet our employees are being failed, as I have recently been informed, on critical decisions Ops tests for not stating the mile post. If the statement of the mile post is what we are looking for here, then it should be in the letter of the rule. There are, in fact, many ways of verbally determining a train’s location by mile post and obtaining a stated milepost from a train crew is only one of them. In this case, we are requiring an employee to comply with something that isn’t even there.”

Following the Investigation, the Carrier concluded that the Claimant had violated MOW Operating Rule 6.2.1 when he did not obtain the specific milepost location of Train BNSF 657 verbally from its crew and assessed him a Level S (Serious) violation with a record suspension of 30 days and a one-year probationary period commencing October 8, 2010. The Organization filed this claim on his behalf. The Parties having been unable to resolve the matter through the on-property grievance procedure, it was submitted to the Board for a final and binding decision.

The Carrier contends that Rule 6.2.1 requires employees seeking to foul or occupy territory to obtain a train’s specific milepost location verbally from the train’s crew. The risks of misidentification could – and in the past, have – resulted in a collision. That is why mentioning a random train number, station close by, or landmark is not considered sufficiently precise. The record establishes that at no time did the Claimant obtain verbal confirmation of the milepost location of Train BNSF 657 during the radio transmission between himself and the crew. He was clearly in violation of Rule 6.2.1; because it is an important Safety Rule, the penalty of a Level S (Serious) violation was appropriate. According to the Organization, the language of Rule 6.2.1 does not require employees to obtain the milepost location of a train verbally from its crew. There are many ways of determining milepost location, and employees have used them for years without being disciplined. The Claimant did

accurately determine the milepost location of Train BNSF 657 and he should not have been disciplined because he determined the location through means other than verbal confirmation from the train's crew.

This is a companion case to Third Division Award 42123. While the specific facts of the two cases are unique, the Board's analysis and contract interpretation are the same.

It is the language of MOW Operating Rule 6.2.1 – Train Location that is in dispute here. The Rule 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.”
(emphasis added)

The Parties are in agreement 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.

Rule 6.2.1 requires an employee who receives track authority behind a train to establish direct radio contact with the crew of that train and verbally (1) confirm the train's identity by engine initials and number and (2) determine the train's location by milepost. The Claimant properly identified the train's identity. The issue is whether he violated the milepost location section of the Rule. The record establishes that the Claimant was in verbal contact with the train's crew, who told him their location on the siding at Crowley. He could actually see milepost marker 334.2. Rule 6.2.1 states that the employee must “verbally . . . determine the train's location by MP” with the train's crew. That is what the Claimant did: he made verbal contact with the crew, who told him where they were by location. He could see both the location and the

associated milepost. Rule 6.2.1 does not state that the only way for an employee to determine a train's location is for the crew to verbally give the employee the specific milepost number of its location. Moreover, the record establishes that employees in the past had been permitted to use alternative means of establishing milepost locations. The Carrier's own witnesses testified to doing it themselves, and one of its safety officials acknowledged that the milepost location provision of Rule 6.2.1 as written was confusing to employees and he received numerous questions on it.

One of the fundamental rules of due process in industrial relations is that employees are entitled to notice of the Rules they are expected to comply with; that notice is one of the principles of just cause. Here, the Claimant did verbally determine the milepost location of Train BNSF 657 with its crew, although the crew did not actually speak the words of that location by specific milepost. Given the evidence in the record that this approach had not been subject to discipline in the past, the Claimant was justified in believing that what he did was in compliance with Rule 6.2.1. If the Carrier has a very specific interpretation of general language that it wants to insist upon, it needs to explain its interpretation to its employees or modify the Rule so as to clarify its expectations. Under the circumstances that pertain in this case, the Board concludes that the Carrier did not have cause to discipline the Claimant for violating MOW Operating Rule 6.2.1 on August 17, 2010, relative to determining the milepost location of Train BNSF 657. Accordingly, the claim must be sustained.

AWARD

Claim sustained.

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.