

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42123  
Docket No. SG-41978  
15-3-NRAB-00003-120244**

**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 M. J. Lokken, 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 21, 2010. Carrier's File No. 35-11-0019. General Chairman's File No. 10-050-BNSF-154-TC. BRS File Case No. 14633-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 headquartered in Detroit Lakes, Minnesota, when this dispute arose. On August 16, 2010, he was called to investigate trouble with signals in Perham, Minnesota. In order to investigate with a hi-rail, the Claimant obtained track and time authority behind Amtrak 66 East from the Train Dispatcher. Once he had his track authority, he established radio contact with the crew of Amtrak 66 East and identified the train with its engine initials and number. He and the crew then discussed the train's location. As the Claimant testified at the Hearing:

"As 6.2.1 describes, we are supposed to identify, contact the train, of course, identify train number and initial. In this case, I had contacted Amtrak and their number for that lead unit was 66, six-six, East, E-A-S-T. After identified the type of train and the number associated to the engine, I also asked the train its location. Amtrak responded they were at New York Mills in which the city at New York Mills, right next to the crossover, does have a station sign to the north of the tracks.

Q.: Did they say they were by that station sign?

A.: They told me they were at that station sign.

Q.: They told you specifically that they were at that station sign?

A.: Yes.

Q.: Okay. Did you ask them what their milepost was?

A.: I followed the rule and I determined what their milepost was."

The Amtrak crew did not verbally give the Claimant their milepost number, only their station location. He determined the milepost location using the Carrier's Track Chart (referred to as "timetables" in the hearing transcript), which specifies milepost numbers for all stations. The station at New York Mills is at Milepost 178.5. According to the Timetable, Perham station is at Milepost 189.3 – more ten miles away. Claimant's Supervisor testified at the Investigation that using the Timetable to determine milepost locations was common; in his opinion, the Claimant had not violated Rule 6.2.1 in determining Amtrak 66 East's milepost location that way.

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 Amtrak 66 East verbally from its crew and assessed him a Level S (Serious) violation with a 30-day record suspension and a one-year probationary period

commencing October 18, 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, or landmark is not considered sufficiently precise. Station locations are particularly problematic, because some stations start at one milepost and end at another. The record establishes that at no time did the Claimant obtain verbal confirmation of the milepost location of Amtrak 66 East 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 accurately determined the milepost location of Amtrak 66 East using the Carrier's own Track Chart, and he should not have been disciplined because he determined the location through means other than verbal confirmation of the specific milepost from the train's crew.

This is a companion case to Third Division Award 42122. Although the specifics 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 they were at the station in New York Mills, Minnesota. The Claimant then used the Carrier’s Track Chart to determine that New York Mills was at MP 178.5 – well away from the location of his track authority. 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 station location. He used a Carrier-produced Track Chart to determine the specific milepost location of the station. Rule 6.2.1 does not state that the only way for an employee to determine a train’s location is for the crew verbally to 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 Claimant’s Supervisor acknowledged that employees frequently used Timetables to determine station milepost locations and expressed his opinion that the method complied with Rule 6.2.1.**

**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 cornerstones of just cause. Here, the Claimant did verbally determine the milepost location of Amtrak 66 East through a radio transmission 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 using the Carrier’s own Track Chart to determine milepost locations 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 employees or modify the Rule 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 16, 2010, relative to determining the milepost location of Amtrak 66 East at New York Mills, Minnesota. 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.**