

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6198**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
T. M. STONE, CARRIER MEMBER
DON M HAHS, ORGANIZATION MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
SLSW, GENERAL COMMITTEE**

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER ST. LOUIS SOUTHWESTERN RY. CO.)**

**Award No. 10
Case No. 10
Engineer J. V. Rogers
30-days Suspension**

*Date of Hearing - May 1, 2000
Date of Award - July 31, 2000*

Statement of the Issue

The Chairman and Neutral Member, after review of the entire record, has determined that the issue before this Board is:

Was Carrier justified in assessing Claimant Engineer J. V. Rogers discipline of 30 days actual suspension in connection with his alleged violation of Rules 16.1, 16.2, and 16.2a on January 30, 1999 when the train he was operating occupied the Kosse Block without proper authority?

FINDINGS:

Public Law Board No. 6198, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein.

The parties have brought before this Board a dispute involving Claimant Engineer J. V. Rogers' alleged violation of General Operating Rules 16.1, 16.2, and 16.2a on January 30, 1999 when the train he was operating, ZMEEG-29, entered the Kosse Block on the Ennis Subdivision without proper authority from the dispatcher. According to the record, which contains no evidence of substantive disagreement between the parties regarding the events at bar, Claimant operated his train into the Kosse Block (governed by DTC

Operating Rules) on the specific advice of his Conductor, who, in error, had assumed authority to do so had been granted by the dispatcher. At the time of the incident and upon discovery of this error, the dispatcher instructed Claimant, via radio, to immediately stop his train as safely as possible, and await further instructions. ZMEEG-29 was stopped without remarkable event, and Claimant, along with Conductor Harrison, was relieved from duty and removed from service pending investigation.

By letter dated February 4, 1999, Claimant and Conductor Harrison were sent the following directive:

Arrange to report to the conference room at 905 East Pacific Ave. Longview, Texas at 9:00 A.M., on Tuesday, February 9, 1999, for a formal investigation to develop facts and place your responsibility, if any, in connection with alleged violation of Rule 16.1, 16.2, and 16.2a occupying Kosse Block without authority at M.P. 169.7 on Ennis Sub., on January 30, 1999, while working as crew members on the ZMEEG-29.

Engineer only, this is a level 4 violation. You can contact William Oertwich for the purpose of arranging for an informal conference to discuss the offense and proposed discipline.

Please be advised, this investigation and hearing is to develop the facts and determine your responsibility, if any, will also satisfy the procedural requirements as specified by the Federal Railroad Administration in 49 CFR Part 240, Qualification and Certification of Locomotive Engineers. Depending on the results of this investigation and hearing, your qualification requirements for the position of Locomotive Engineer may be affected.

Rules 16.1, 16.2, and 16.2a, the basis for the above charge, state:

Rule 16.1 – Authority to Enter DTC Limits

The timetable will designate DTC limits. A train may enter DTC block limits only after receiving verbal authority from the train dispatcher. DTC territory will not include territory where Rule 6.13 (Yard Limits) is in effect.

Rule 16.2 – DTC Block Authority

The train dispatcher will issue DTC block authority to a crew member on the head end of the train when possible. An employee

operating the controls of a moving train may not copy DTC block authority.

Rule 16.2a – Recorded in Writing

The employee who receives or releases DTC block authority must record it in writing...

According to the record before this Board, the hearing was actually conducted on February 18, 1999, during which Conductor Harrison appeared as a witness, having exercised his right under Carrier's current discipline Policies and Procedures to waive investigation. In pertinent part, Harrison testified on cross-examination at page 29 of the transcript that he, as Conductor of Train ZMEEG-29 on the date in question, had been primarily responsible for keeping the DTC log, and *thought*, albeit in error, that authority had been granted by the dispatcher to enter the Kosse Block. As is required by Rule 16.2a above, he noted as such on the applicable DTC sheet for their assignment, a copy of which was entered into the record as Exhibit C to the transcript of investigation. Conductor Harrison further acknowledged in that same testimony, that when Claimant questioned him specifically concerning authority to enter the Kosse Block, he had given him clear verbal indication to proceed. (The Board notes that a transcript of the dispatcher's communications with Train ZMEEG-29 on January 30, 1999 was entered into the record of the February 18, 1999 hearing, and indicates unequivocally, as does the testimony of both Conductor Harrison and Claimant, that no such permission had, in fact, been granted.)

Subsequent to the hearing, Claimant was assessed a Level 4 30-day actual suspension, and in accordance with FRA 49 CFR Part 240.307, his Locomotive Engineer Certification was revoked pending review. The revocation of Claimant's Engineer certification was duly appealed by the Organization, the content of which was forwarded by the FRA to Carrier's Manager of Engineer Certification and Licensing, Brigitte Hunsaker for consideration. Ms. Hunsaker responded to the query as follows:

After careful review of the investigation transcript, the FRA regulations, and all other pertinent facts regarding this incident, I find the revocation of Engineer Rogers' license to be inappropriate for the reasons listed below:

- 1. Engineer Rogers was instructed by the Conductor that they did in fact have authority to occupy the block.*
- 2. The Conductor accepted responsibility for the error.*

3. *Even though no argument is presented that Engineer Rogers did in fact occupy a segment of main track without authority, he was acting on the verbal and written instructions of the conductor.*

Therefore, by copy of this letter to the Superintendent, Mr. Rogers' personal record should be corrected to reflect that the revocation for this incident is expunged.

It must be understood removing the revocation from Engineer Rogers' license in no way relieves him of the discipline assessed, nor does it allow a claim for time lost. Any appeal of the discipline must be progressed through Labor Relations. Although I do not agree that Engineer Rogers is totally without fault in this incident, I do believe the culpability lies primarily with the conductor and therefore view the circumstances sufficient to expunge the revocation.

As the parties were unable to resolve the Organization's resulting appeal of Claimant's 30-day suspension, it is now before this Board for full and final disposition.

The Carrier argues that Claimant was negligent in the performance of his duties, as he indisputably operated his train into a DTC block on January 30, 1999 without securing proper verbal authority from the dispatcher, as is required by Rule 16.1 cited above. Carrier states the obvious when it asserts its position that occupying the Main Line without authority is the most egregious of rule violations, as it jeopardizes the safety of the train crews, employees, and the general public. It further rests upon the well-established and supported industry principle that engineers and conductors jointly share responsibility for safe train operations.

In rebuttal, the Organization points out that Claimant, operating the controls of a moving train at the time of this incident, was expressly barred from copying block authorities in accordance with the provisions of General Operating Rule 16.2, and as such, was dependent upon his Conductor to perform in that capacity in behalf of the entire train crew. The Organization also reminds this Board that Claimant did not take for granted that he, in fact, had authority to operate into the Kosse Block, but was given verbal *and written* direction by Conductor Harrison to do so.

Upon the whole of the record, this Board is persuaded by the Organization's arguments in this matter. During the handling of Claimant's appeal on the property, Chairman Thompson legitimately contemplated the potential result of a finding in favor of the Carrier when he stated in his letter to Carrier on April 16, 1999 (BLE Exhibit 3) as follows:

If the Carrier is going to hold the engineer responsible for another employee's error, we will have no choice but to instruct the engineers to stop the train and take the authority to assure compliance.

This Board agrees; Rule 16.2 is succinct. Claimant could not, himself, have copied authority from the dispatcher to enter the Kosse Block (or all others for that matter) unless he stopped his train. So, as a practical consequence, he justifiably relied upon his Conductor to secure and release it in behalf of the crew as a whole while ZMEEG-29 was on the move. (The transcript of dispatcher communications made part of the hearing record indeed contains evidence that other block authorities had been secured and released by the conductor prior to the incident at issue. The Board understands the fact that while Train ZMEEG-29 is identified *inter alia* in that transcript using Claimant's name, there is no indication that the dispatcher was ever in communication with him personally, as DTC practices mandate identification of a specific train by lead engine number, direction, and engineer's name.)

In so finding for the Claimant in this case, we must, however, make one thing perfectly clear. We in no way mitigate substantial prior arbitral authority which has consistently sustained the right of railroad Carriers to hold conductors and engineers *jointly* responsible for the safe operation of their trains. We are merely of the opinion that, in this case, Claimant satisfied that obligation and acted in good faith when he addressed Conductor Harrison with specific regard to their authority to enter the Kosse Block, and was given verbal and written evidence by him that permission to do so had been granted by the dispatcher.

Accordingly, Carrier is directed to remove the Level 4 30-day actual suspension and all references to this incident from Claimant's service record, and compensate him for any and all time lost as a result of that discipline.

AWARD

The issue before this Board:

Was Carrier justified in assessing Claimant Engineer J. V. Rogers discipline of 30 days actual suspension in connection with his alleged violation of Rules 16.1, 16.2, and 16.2a on January 30, 1999 when the train he was operating occupied the Kosse Block without proper authority?

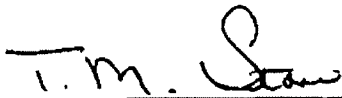
is answered in the negative, "No." The claim is sustained as set forth in the findings.

ORDER

Carrier is directed to comply with this Award within thirty (30) days of the date indicated below.



John C. Fletcher, Chairman & Neutral Member



T. M. Stone, Carrier Member



Don M Hahs, Organization Member

Dated at Mount Prospect, Illinois., July 31, 2000