

Joseph Lazar, Referee

CASE NO. 10

STATEMENT
OF CLAIM:

FINDINGS:

Rule 70(a) reads:

"When a signal at an Automatic Interlocking displays a red aspect, on track equipment that shunts the track must stop before passing the signal and remain there while employee in charge operates the time release according to the instructions posted in the release box. If the signal indicates proceed after the instructions complied with, movement may pass the signal and move over the crossing. If the signal does not clear, movement beyond signal and over crossing must not be made until the employee at the crossing is sure there is no train or engine movements approaching on any route and a proceed hand signal is received."

Rule 70 (b) reads:

"When a signal at a manual interlocking displays a red aspect, on track equipment that shunts the track must stop before passing the red signal. The employee in charge of the machine must communicate with the Control Operator and be governed by his instructions. If communications have failed, movement through the interlocking may only be made after lining all switches for the route to be used and the machine that occupies the track within the interlocking limits but clear of any conflicting routes for a period of ten minutes."

The transcript of investigation shows the following testimony by Roadmaster L. B. Lang:

"Q. Alright. Did an incident occur on December 1, or was an incident brought to your attention?

A. Yes, it was.

Q. By whom?

A. By the Road Foreman for the Southern.

Q. Would that be the Norfolk and Southern?

A. Norfolk Southern, yes.

Q. Norfolk Southern Railroad. Could you describe to me what happened?

A. He came - I was in the Tool House at Jasper, out behind the Depot, and he came out there and said that he wanted to talk to the Foreman, whoever was in charge of the Gang out there, and I asked him what the trouble was. He didn't know who I was, and I didn't know who he was. He told me that one of the machines had just about been hit at the railroad crossing there at the Interlocker at Jasper. Of course I told him who I was and he told me who he was, and that's basically how I found out about it.

Q. Well, what did he say happened?

A. He said that the Southern Train came around there, and when they got into the Interlocking limits they had a clear signal and then before they got to the Approach Signal it went red and cleared right back up in their face. They came around there, and about the time they got to the Signal at the Interlocker itself it went red, and of course they were right on it. He said when they went by - there's a little curve there - he said they saw the ballast regulator about 3 or 4 foot from the railroad crossing.

Q. Alright, subsequent to this visit, did you request this gentleman to give you a statement of what he told you?

A. Yes sir.

Q. And did he give you such a statement?

A. Yes he did.

- Q. Is that the statement the gentleman gave you?
- A. Yes sir, it's a statement from D. G. Orazine, the Road Foreman of Engines for the Norfolk Southern Railroad, and it's notarized.
- Q. Would you, for the record, read it.
- A. It's dated December 11, 1986. It says:

To Whom it May Concern:

On December 1, 1986, approximately 9:25 AM Southern Train 552, eastbound at Jasper, Alabama, Mile Post 86.4 NA, nearly struck BN track equipment at BN Interchange, Jasper, Alabama.

No. 552 reported near miss with two BN track machines. Engineer reported 1st Machine 05-0052 (Double Broom) had crossed in front of engine and was missed only five (5) feet by train. Another machine BNX 6-0228 Regulator was north of Southern main line within interlocking limits. No. 552 had clear signal at Jasper.

Road Foreman of Engines D. J. Orazine arrived on scene shortly after incident and talked to Roadmaster Bruce Lane about incident. Both called Machine Operators Bob Highfill of 05-0052 and Jimmy Young of BNX 6-0228 into office and found that no one had operated time release on interlocking at Jasper. Operator Highfill stated he heard approaching train and then crossed interlocking in front of Southern Train. Operator Young heard train but stopped north of Southern main line as train was three (3) car lengths from crossing.

No BN track people had attempted to operate time release to set signals against Southern trains. Tape from interlocking machine shows:

9:16 AM Southern approach occupied by Southern Train No. 552.

9:24 AM BN interlocking occupied momentarily then cleared for Southern train.

9:26 AM Southern Train occupied interlocking on clear signal.

9:26 10/AM BN O.S. Circuit occupied by BN track machine.

9:27 AM Southern Approach cleared.

9:30 AM Southern cleared interlocking.

9:33 AM BN O.S. Circuit cleared." ****

Claimant B. R. Highfill was not present at the investigation held on January 6, 1987. The transcript reports:

"Mr. Wiese (Investigating Officer): Mr. Spears (General Chairman, BMW), Mr. Highfill is not present. Do you have any knowledge why he is not present?"

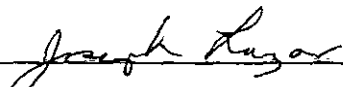
Mr. Spears: Mr. Highfill was under the impression that he agreed to go back to work without pay for time lost and you couldn't handle his case any further. But after I've arrived here at Memphis today, I found out that that's not the case and it's a misunderstanding. Therefore, I'd like to go ahead and hold this investigation on his behalf also." (Tr., p. 1).

The evidence of record shows beyond question that no one--and this includes Claimant B. R. Highfill--had operated time release on interlocking at Jasper, and the evidence is clear that the Double Broom operated by Claimant had crossed in front of engine of Southern Train No. 552 and was missed by only five feet.

The record shows substantial probative evidence in support of the Carrier's determination that Claimant violated Rules 70(a) and 70(b) of the Burlington Northern rules of the Maintenance of Way. Although the Foreman was in charge of seeing the machines over the Interlocks during the period involved, this did not relieve Claimant of his own responsibility to comply with the rules. Claimant's failure was a grave violation, resulting in a near-collision which might have cost him his life. Under the circumstances of this case, the discipline of eight (8) days suspension was not excessive.

A W A R D

1. The Carrier was not in violation of the Agreement.
2. The claim is denied.



CHAIRMAN AND NEUTRAL MEMBER OF PUBLIC LAW BOARD 4340

Dated: December 14, 1987