

Joseph Lazar, Referee

CASE NO. 11

STATEMENT
OF CLAIM:

FINDINGS:

Under date of January 14, 1987, Claimant Mantel Griggs received the following letter:

"Said investigation showed clear violation of Rules 70(a) and 70(b) of the Burlington Northern Rules of the Maintenance of Way effective April 27, 1986 in connection with the on track machines under your direct supervision nearly colliding with Norfolk Southern Train 552 on Dec. 1, 1986 at Jasper, Alabama."

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

4340-11

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:

4340-11

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." ****

The transcript of investigation shows the following testimony of Assistant Foreman Joe N. McCluskey:

"Q. Alright. Uh, did you, uh, tell Mr. Griggs about having to run the Interlocker - run the release on the Interlocker?

A. Yes sir, I told him we needed to run a release on it or flag the crossing, and when we started to work off of it, we needed to make arrangements with the Southern Railroad to get some Track and Time so we can start surfacing off our interlocker there.

Q. Did all this take place prior to December 1?

A. Yes sir.

Q. OK. You told Mr. Mantel that Roadmaster and Mr. Buzbee wanted you to be aware and concerned that you go through the proper procedures to get through the Interlocker. Is that correct?

A. Right." (Tr., pp. 37-38).

The transcript of investigation shows the following testimony of Claimant Mantel Griggs:

"Q. You know what procedures to follow?

A. Yes.

Q. And what procedures are those?

A. Well, you get Track and Time and if you want to go across the crossing you're supposed to run a release on it, and flag the machines on across."

Q. Did you at any time take the extra step to inform your Operators on the procedures of getting across the crossing?

A. No, I didn't take the extra step to tell them. Everybody knew that the crossing - the Interlocker was there.

Q. Everybody knew it, but you never did personally tell the Operators to run the release.

A. No, me or Joe one would just be at the crossing and flag it.

Q. So am I saying this correct then? Not every time that you went across the crossing did you run the release. Am I saying that correct?

A. Yes. No, we didn't run the release every time.

Q. You didn't run the release, you just "flagged them across". Is that correct?

A. Right.

Q. At any time did you run the release?

A. I didn't, no.

Q. Did Mr. McCluskey run the release, to your knowledge?

A. Uh, I don't know." (Tr., pp. 43-44).

"Q. Do the machines on your Gang shunt the track? Throw the signals?

A. Yes, we have, I think, two Regulators do.

Q. But at no time you were running the release on the Interlocker at Jasper, Alabama?

A. No, we always just flagged them across.

Q. Isn't that a rule violation?

A. Well, I guess due to the Rule Book it is.

Q. You know, in view of this near miss we had with the Norfolk Southern Train 552 on December 1, if you had to go through an Interlocker now, how would you go through the Interlocker?

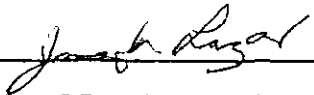
A. Well, I'd run the release on it and make sure it's clear both ways before moving across it." (Tr., pp. 47-48).

The evidence of record clearly establishes that Claimant received verbal instruction to run the release on the Interlocker, knew the location of the machines on his gang and the location of his Assistant Foreman, had not informed his Operators of the proper procedures to get through the Interlocker, did not run the release on the Interlocker, and admitted that he violated the rules. The record shows substantial probative evidence to support the Carrier's determination that Claimant violated Rules 70(a) and 70(b) of the Burlington Northern Rules of the Maintenance of Way. Considering the gravity of the violation with possible death and injury to members of Claimant's gang, and considering the failure of Claimant to understand the seriousness of his violation ("Cause I feel that I was taken out of service for nothing, really." (Tr., p. 52), Claimant's discipline was not excessive.

AWARD NO. 11 (p. 6)
CASE NO. 11

A W A R D

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



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

DATED: December 11, 1987

4340-11