

PUBLIC LAW BOARD NO. 5606

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION OF THE INT'L BROTHERHOOD OF TEAMSTERS
TO)
DISPUTE) SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it assessed Track Foreman Robert J. Henry thirty (30) days discipline for allegedly running through an interlocking without permission from the District 1 dispatcher on April 7, 2006.
2. As a consequence of the violation referred to in Part (1) above, Track Foreman Robert J. Henry shall now have his record cleared of this incident and be compensated for all wage loss suffered. (Carrier File MW-06-15)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The discipline at issue, a thirty (30) day suspension, was assessed Claimant following a company investigative hearing at which it was determined he was guilty of running through an interlocking without permission from the District 1 Dispatcher on April 7, 2006 while working as a Road Foreman and engaged in track patrol with a track car. Claimant had been issued a Form D which restricted the track territory in which he was authorized to operate. However, it came to the attention of the Carrier that Claimant went past a stop signal into a two-mile stretch of track not covered by the limitations of his Form D.

At the company hearing, Claimant, in part, stated:

The bottom line is I did in fact pass the stop signal at CPF 92. I did not deny it when I done it and I'm not going to try to do it now. What happened was I, as Mr. Belforti stated, I had permission all the way to 92. When I got there, I stopped. I did not run through it. And I got Mr. Taylor's permission [another Foreman, not a Dispatcher]. I was,

in fact, transporting a tamper for Mr. Taylor to use. He was waiting for it. When I got there he gave me permission in, said the number 2, the switch was lined for the number 2 track where he wanted the tamper. . . . I cleared up, I tried to get hold of Mr. Taylor and tell him I was clear, couldn't get him, I called Mr. Belforti and canceled my Form D and told him to tell Mr. Taylor I was clear of his territory. He said, well, how did you get there, did you go by 92, and I said yeah, I guess I did, I did realize then that I should have asked for the 241.

Claimant went on to state that he was disputing being subjected to a disciplinary hearing, asserting that other employees who had committed a similar offense were only subjected to a re-qualifying period of time out of service. Although Claimant asserted he knew of six individuals, only one notarized statement of a former employee was offered into the record. This employee said he had operated beyond Form D permission; accepted a waiver of hearing; was given a reprimand; and, re-qualified under the operating rules approximately two to three weeks later.

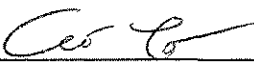
In study of the record the Board finds no reason to conclude that the Carrier was, as the Claimant asserted, engaged in a "witch hunt" in subjecting him to a hearing. Claimant was offered opportunity of a waiver of a formal hearing with a fifteen (15) day penalty. He refused to accept it in an unsubstantiated contention that "nobody else has ever gotten any time off for violating similar rules and endangering people."

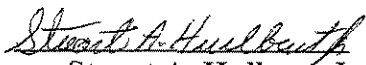
During the hearing Claimant made several statements in an attempt to assert that he had "abided by all the rules;" he "had permission" to enter the other track territory; and, it was only for "one brief moment" that he forgot to say, "may I."

It is apparent that Claimant has failed to recognize the importance of a need to fully comply with all safety and operating rules. His past record shows two prior disciplinary suspensions for violations of operating rules and one reprimand in a failure to exercise care in the performance of duties. In the circumstances, the Board finds no basis to here disturb the actions of the Carrier in its assessment of discipline. The claim to set discipline aside will, therefore, be denied.

AWARD: Claim denied.


Robert E. Peterson
Chair & Neutral Member


Anthony F. Lomanto
Carrier Member


Stuart A. Hulburt, Jr.
Organization Member

North Billerica, MA
Dated 2/5/08