

**PUBLIC LAW BOARD NO 5860**

Award No. 159  
Case No. 169

**PARTIES TO DISPUTE:**

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

**STATEMENT OF CLAIM:**

1. The Carrier violated the Agreement when on June 30, 2000, Mr. F. L. Lewis was disqualified as an Independent Machine Operator based on his alleged inability to properly secure track and time protection from the Dispatcher.
2. As a consequence of the Carrier's violation referred to above, the Claimants shall have his right to work as an Independent Machine Operator restored, and he shall be compensated for all wage and other benefits loss.

**FINDINGS**

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant was disqualified from the position of Independent Machine Operator, not because of his inability to operate the machine, but because of his alleged problem in copying train orders. Claimant may be working with a gang where the Foreman secures the track protection, but on other occasions he may be working

Independent of other gangs, that he in fact may be assigned to a project at a location where no other is employed and with the size of the Carrier, he may also find himself working in unknown territory.

No one can minimize the importance of train orders that are clearly written and delivered. The Carrier has put in place a practice that is as foolproof as it can be. Key words are pronounced then spelled. The recipient must repeat back the exact message delivered. The reason is obvious, both the originator of the track order and the recipient must be on the same page.

Claimant had been working as an Independent Operator since receiving the bid in March. From then to June 30, 2000, he had been working with a mini-tie gang for the majority of the time where the track protection issued for the gang included Claimant's machine. Claimant did state that at least five or six times he had to secure his own track and time orders. In these instances, apparently those track orders were completed without a glitch. If there were any problems with train orders at that time, it has not been brought to the attention of this Board.

Claimant should be given another chance to increase his ability to copy train orders. Claimant's representative did state that the communication line was noisy and, to this Board, that was evident by the second Dispatcher at first misunderstanding Claimant's name.

Note the exchange:

**"Mr. Lewis: Lewis, L-E-W-I-S, over.**  
**Dispatcher: L-E-S-S, over?**  
**Mr. Lewis: L-E-W-I-S, over.**  
**Dispatcher: Lewis, over?**  
**Mr. Lewis: Yes, sir, that is correct, over."**

Furthermore, the second Dispatcher missed key parts of Claimant's read back.

Note the transcript of the tape which reads:

**"Dispatcher: Until noon, thank you. Lewis here's some time. For Lewis, track and time authority 55539, that's 5-5-5-3-9, that's triple 5 and a 3-9, granted on main track (inaudible) east, E-A-S-T end Crowley, switch no, and west, W-E-S-T, west switch west, W-E-S-T, Birds, switch no. 0845, 0-8-4-5 till 1200, 1-2-0-0 joint with trains and maintenance of way, over.**

**Mr. Lewis: Hang on. Okay. Lewis (inaudible) track authority number 55539 on the M-A-I-N at the west end, westbound control signal east end of Crowley, switch no, to West Birds, switch no. From 0845 till 1200 joint with trains and maintenance of way, over.**

**Dispatcher: Need authority number and that's main track (inaudible) switch, switch east end of Crowley, switch no, and west, W-E-S-T west switch west end of Birds, switch no. Only that repeat, over.**

**Mr. Lewis: Track authority number 55539 on the M-A-I-N main track, east end of Crowley switch no, West Birds, switch no. Times start at 0845 till 1200 joint with trains and maintenance of way, over.**

**Dispatcher: Now let me repeat what I'm asking for. You're not saying switch after west, W-E-S-T west switch, west end of Birds, switch no. That's the only thing I want to hear out of you. West switch, west end of Birds, switch no, over.**

Mr. Lewis: 55539 on the M-A-I-N main, switch E-A-S-T end Crowley, switch no, west switch Birds, no. 0845 till 1200 joint with trains and maintenance of way, over.

Dispatcher: What part of this you can't understand? Do not repeat nothing except what I'm asking for. Start with west, W-E-S-T west switch, west end of Birds, switch no. That's all I want to hear. West switch, west end of Birds, switch no, over."

When Claimant first repeated the train order, he gave the track authority number, yet the Dispatcher asked for it again. Obviously, the Dispatcher could not hear or did not hear Claimant repeating the track authority number. It is also evident that when the tape was transcribed, the transcriber had to declare an inaudible in the order given by the Dispatcher and in Claimant's read back.

It is clear to this Board that the communication lines were noisy and somewhat difficult for both the Dispatcher and Claimant to hear clearly. If the transcriber could not distinguish certain words when the transcriber can play the tape over and over, plus adjusting the volume while doing so, it must be that the tapes were noisy, for this Claimant is not to be faulted, but it could also be that Claimant may have a slight hearing problem in that he may have difficulty in distinguishing certain sounds and/or letters. To this extent, he is to undergo a hearing test and if he has no defect, then on one day, someone is to work with Claimant copying train orders to determine his response thereto. All of this must be completed or at least started within 30 days of being notified of this Award.

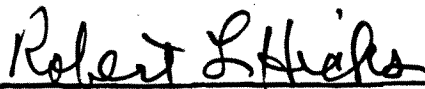
If Claimant has a hearing problem, or for some reason cannot correctly copy train orders, the disqualification becomes permanent, but if he does not have a physical disability and successfully concludes the training session, the disqualification will be reversed. Irregardless, there is no pay for any time Claimant has lost as train orders are for the safety of everyone. If there is difficulty in hearing, either party must speak up. If the one receiving the train order does not clearly understand what is being said, he must ask for a repeat to be certain. Train orders cannot be guessed. They must be factual. Even if the line was noisy, Claimant still must be positive he has heard and copied the order correctly.

**AWARD**

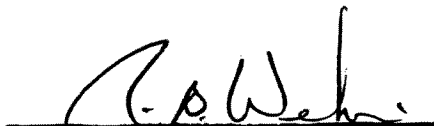
Claim sustained in accordance with the Findings.

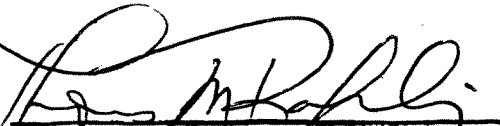
**ORDER**

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 date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member

  
Rick B. Wehrli, Labor Member

  
Thomas M. Rohling, Carrier Member

Dated: March 6, 2002