

PUBLIC LAW BOARD NO. 5850

Award No. 185
Case No. 185

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on December 18, 2000, Mr. D. A Rodriguez was issued a Level-S, 30-day record suspension with a 12 month probationary period for violation of Rule 6.3.1, Track Occupancy, of the Maintenance of Way Operating Rules, and violation of Rule B-1.1 of the Maintenance of Way Safety Rules in connection with his alleged occupation of the main track and/or siding without authority between switches at Tangier, Oklahoma, MP 262.62 - MP 266.62, Panhandle Subdivision approximately 1016 hours on Monday, October 30, 2000.

2. As a consequence of the Carrier's violation referred to above Mr. Rodriguez shall have his record expunged of the above referenced discipline.

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 received a letter from the Carrier dated November 2, 2000, advising him of an investigation to determine his responsibility, if any, with the alleged violation of Rule 6.3.1, Track Occupancy, when he allegedly occupied the main track and/or siding without authority between switches at Tangier, Oklahoma, at approximately 1016 hours

on Monday, October 30, 2000, while assigned mm a Machine Oprmtor on the Amarillo Division.

The Investigation was convened November 26, 2000, after which Claimant mm
• 000000 a 000000 • wpenl on of 30 days.

There exists no controversy. Claimant did • xcmed his back authority by going beyond the limits the Dispatcher hmd met Claimant's only defense was that hm was new to the territory so he blindly followed the Lemd Machine Operator who stated he wmm familiar with the territory. Then mm no conference between tho three Machine Operators to discuss the train order or the movement of the • quipment Claimant did copy the train order although tha Dispatcher • ought only the Lemd Operator's acknowledgement.

Claimant has bmen with the Carrier • inco April, 1677, end has only one morded disciplinary mark on hb record. Ordinarily that would be considered as • mitigating circumstance, but train orderm are the lifeblood of the operating • ymWm • nd • ny failure to • dhmr thereto can • nd hmve led to disastrous results, evon to fatalities. Claimant, with all his years, should have been twice mm cautious when moving into unknown territory rather thmn blhdly follow • nether. Clmimmnt readily • dmlttmd hm knew how was responsible x□□himself. Claimant • houl6 have requumnted • conference with the Lmmd Machine Operator, oven if the Lead Mmchino Operator was careless mnd did not request a conference.

The Carrier has sufficient • vidonco of Claimant's culpability for tho charges assessed. Even though Claimant has a relatively clean disciplinary mhmet for hb 23 years service, the merioueneme of not following train orderm cannot be mitigated.

AWARD

Claim denied.

ORDER

The Board, for consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Robert L. Hicks
Robert L. Hicks, Chairman & Neutral Member

Rick B. Wehrli
Rick B. Wehrli, Labor Member

Thomas M. Rohling
Thomas M. Rohling, Carrier Member

Dated: December 27, 2001