

## Public Law Board No. 6204

### **Parties to Dispute**

Brotherhood of Maintenance of Way	)	
Employees	)	
	)	
vs	)	Case <b>21/Award 21</b>
	)	
Burlington Northern Santa Fe	)	

### **Statement of Claim**

1. That the discipline of a twenty (20) day suspension, removal of Foreman and Assistant Foreman seniority, and three (3) years' restriction **from** bidding on Foreman and Assistant Foreman positions imposed on Mr. A. J. Torrones for alleged violation of Maintenance of Way Operating Rule 6.3.1 on August 25, 1994 was arbitrary, capricious and on the basis of unproven charges.
2. As a consequence of the violation the Claimant's record shall be reinstated to his Foreman position with Foreman and Assistant Foreman seniority unimpaired and he shall be compensated for all wage loss suffered as well as expenses incurred beginning September 26, 1994 and continuing until he is reinstated to service.

### **Background**

The Claimant was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged failure to obtain proper authority to occupy a main track and his alleged failure to notify another Foreman that he was going to run on his Track and Time Permit while assigned as Foreman on a tie gang. After an investigation into this matter was held the Claimant was advised that he was being suspended from service of the Burlington Northern Railroad for twenty (20) days. He was also advised that his Foreman and Assistant Foreman seniority was being taken

away for violation of Rule 6.3.1 of the Maintenance of Way Operating Rules. The Claimant was further advised that he would not be permitted to bid on either a Foreman or Assistant Foreman's position for three (3) years. This discipline was appealed by the Vice General Chairman with the Division Superintendent. This appeal was denied, The claim was subsequently appealed up to and including the highest Carrier **officer** designated to hear such. Absent settlement of the claim on property it was docketed before this Board for **final** adjudication.

### **Discussion**

The Rule involved in this case is the following.

#### **Rule 6.3.1 Main Track and Controlled Siding**

##### **Authority**

On a main track or controlled siding, authority is required when:

- On-track equipment is on or foul of the main track or controlled siding.
- Using off-track equipment foul of the main track or controlled siding.
- Work is performed on or foul of the main track or controlled siding when:
  - Noise **from** tools or equipment impairs hearing.
  - Wearing hearing protection.
  - Other conditions/situations impair hearing.

**or**

  - Conditions/situations impair sight

**or**

- Work is performed on or foul of the main track or controlled siding when the movement of trains is affected.

### Types of Authority

When any of the above conditions exist, one of the following authorities is required:

1. A train location lineup.
2. A track warrant
3. A track bulletin Form B
4. Track and time (in CTC and manual interlocking limits)
5. Flags, placed as prescribed by the rules
6. Occupancy Control System (OCS)
7. Block Register Territory (BRT)

Yard limits do not authorize equipment to occupy a main track or work to be performed on a main track. Movements on a main track within yard limits can be made only when the way is known to be clear.'

This case deals with the Claimant's alleged failure, while Foreman of the Carrier's Mini-Tie Gang TP-32, to obtain proper authority to occupy main track No. 1 between Belmont, Nebraska and Milepost 419.8.' It also deals with the Claimant's alleged failure to **notify** another Foreman that he was going to move his equipment on the latter's Track and Time Permit at or about **2:30 PM** on August 25, 1994.

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<sup>1</sup>Carrier's Exhibit 3 1.

<sup>2</sup>**For** reasons unclear to the Board the notice of investigation states that the Claimant did not have time and track on **the** date **in** question on track No. 2. This should read: track No. 1.

According to testimony at the investigation by the General Roadmaster a safety meeting was held on August 25, 1994 at Crawford, Nebraska which was attended by a large number of employees from the rail gangs as well as B&B employees. Some employees **from** the Signal craft also attended the meeting. After the meeting the Claimant to this case was directed to move some contract machinery **from** Belmont, Nebraska to Crawford, Nebraska for the following day's work which was going to be performed at Crawford. The distance between these two points is about 14-15 miles. The equipment had to be physically run on the rail. The number of machines to have been moved was 6. Thereafter, according to the General Roadmaster, while he was driving **from** Crawford to Alliance, Nebraska he was monitoring the radio **from** his vehicle. He heard one track Foreman, whose name was **Ashton**, calling to get track and time because this Foreman was moving his machines onto the main track. The Claimant was also on the radio. According to the Roadmaster the two Foreman were talking about problems getting the electric lock on the switch at Belmont open. Shortly thereafter the Roadmaster heard Foreman **Ashton** ask the Claimant if the latter was out on the main track with his equipment on **Ashton's** track and time. The Roadmaster testified that he heard the Claimant answer in the **affirmative**. The Roadmaster testified that he had not heard the Claimant himself get track and time for the main track. This witness testified that it is not legal to enter somebody's else's limits until permission is given by the person who has secured the authority. But the problem with this, as the Roadmaster explained, as it applied to the circumstances at hand, was that when **Ashton** would have moved his two

machines **from** one block of track to the next for which he had and was obtaining authority to do so, he would have given up authority “...in the block he just vacated...” and “...**had** he done that without knowing that these other machines, under the direction (of the Claimant), were still occupying that portion of the track, they would have been out there with absolutely no authority whatsoever. They could have ran a train in on ‘em and struck the machines and possibly injured the people operating those machines...”. Further, according to the Roadmaster, the corridor in question is a very busy one which **runs** approximately 50 trains a day. The corridor runs loaded coal trains, empty trains as well as extra engines which are needed to help out. Thus the chances of meeting a train if one is on the track with track equipment without authority is highly likely. The General Roadmaster had the incident as he heard it on the radio investigated by a Roadmaster. The result of this investigation, which included interviews with both Foreman **Ashton** and the Claimant and the operators of the equipment being moved on the track on the day in question showed that the Claimant had his equipment on the main track for “...close to **half** hour with no track and time, no protection, authority...”, and that there was a clear misunderstanding between Foreman **Ashton** and the Claimant. A review of the track and time permits issued on the day in question shows that none had been issued to the Claimant to occupy the main line track No. 1. Testimony by the Roadmaster who conducted the investigation cited **in** the immediate foregoing corroborates the testimony by the General Roadmaster. This Roadmaster also testified to the fact that at the safety meeting which was referenced by the General Roadmaster in his testimony that it was

established that “...**if** you’re on or foul the main track, you have to have authority...“. This witness testified that he interviewed Foreman **Ashton** and the Claimant. The former stated that he had obtained authority to be on the main track to move his equipment. The latter stated to the Roadmaster that did not have his own track and time to be on the main track with his equipment. When the Claimant was asked if he had gotten permission **from Ashton** to use his track and time the Roadmaster testified that the Claimant responded: “...well, no, not right away...“. This Roadmaster testified that it is possible to go on another person’s track and time if there is a clear understanding but it was clear to him from his interviews that such understanding did not exist between **Ashton** and the Claimant on the day in question. After the investigation was done by the Roadmaster the Claimant was pulled **from** service and he was give a drug screen test. The test results were negative. This witness **confirmed** that the track between Belmont and Crawford has a high density of **traffic**. A review of the track and time permits issued on the day in question shows that the Claimant did have authority to be a siding prior to accessing the main track with his **equipment**.<sup>3</sup> But he did not have authority himself to be on the main track, as noted earlier. Testimony by the Gang Roadmaster, to whom Mr. **Ashton** reports, was that he recommended to the Claimant that he could move his equipment on **Ashton’s** track and time in order to get the equipment to Crawford because of the heavy traffic. The Gang Roadmaster had no authority himself to grant track and time, but he did make this

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<sup>3</sup>Trans. @ p. 12 (Track & Tie No. 13, August 25, 1994).

recommendation. But he later learned that the Claimant was moving his equipment on the main track but that he had not cleared track and time with **Ashton**. When a discussion ensued when all the equipment arrived at Crawford it was clear, according to this witness, that there had been some confusion between **Ashton** and the Claimant about time and track authority on the main line and that the Claimant had not gotten permission from **Ashton**.<sup>4</sup> According to testimony by Foreman **Ashton** he obtained track and time on the day in question to move his equipment on the main track. He obtained track and time from Behnont, Nebraska to the 419.8 crossovers, and from that point he obtained track and time to Crawford, Nebraska. This witness testified that he had talked with the Claimant prior to moving his own equipment and it was his understanding that the Claimant was to obtain his own track and time. He states that he overheard a conversation on the radio between the Claimant and the Gang Roadmaster wherein he understood that the Claimant was moving equipment on the main track under his, Foreman Ashton's, track and time. **Ashton** then radioed the Claimant to ask him if he was using **Ashton's** track and time to move the equipment and the Claimant answered in the positive.

According to this witness,

“...it was my **understanding**...(that the Claimant) was going to get his own track and time and (that) I was going to get mine...”

when moving the equipment to Crawford Nebraska. **Ashton** testified that he had

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<sup>4</sup>This Gang **Roadmaster** is also **the** one who brought the Claimant for his **drug** screen

<sup>5</sup>**Trans.** @ p. 23.

originally intended to take track 2 to Crawford but ended up getting track and time only for track 1. Testimony by the Claimant is as follows. He attended the safety meeting as had the others, and he was informed by **Ashton** that the latter had track and time to move his equipment **from** Belmont to Crawford, Nebraska. The Claimant testified that **Ashton** knew he was traveling on the latter's track and time because he talked with **Ashton** on the radio shortly after the Claimant had his conversation via the radio with the Gang Roadmaster. The Claimant states that he had no conversation with **Ashton** about using his track and time prior to this point. The Claimant states that he originally thought that he and **Ashton** were going to go to Crawford on different tracks. But when **Ashton** was transferred over to track 1 and the Gang Roadmaster suggested that he go down this track **under Ashton's** permit he decided to do so. According to the Claimant when he arrived at Milepost 419.8 **Ashton** advised him that the machines would all go into Crawford at that point under **Ashton's** time and track on main track 1.

### **Findings**

The record shows that 8 machines were moved from Belmont to Crawford, Nebraska on the day in question. Two of them, an anchor machine and a Adzer cribber, was under the authority of Foreman **Ashton**. The other machines were under the authority of the Claimant.

A review of the testimony by **all** of the witnesses shows a number of things. First of all, the testimony shows, and the Claimant admits, that he never had a conversation



with Foreman Ashton about using his track and time on main track 1 from Belmont to Crawford, Nebraska until Ashton himself radioed him after the latter accidentally overheard a conversation between the Claimant and the Gang Roadmaster. For reasons which only the Claimant best understands he apparently believed that the suggestion by the Gang Roadmaster that he travel under Ashton's track and time was equivalent to clearing this permission with Ashton himself. The Claimant states so unequivocally in his testimony. To this effect we cite here for the record the following:

“Q. (by BMW Rep): . . .If Mr. Ashton did not have a permit on main track 1 would you have taken your machines out on the track without a permit?

“A. (by Claimant): No, sir.

“Q. (by BMW Rep): But due to the knowledge that Mr. Ashton did have a permit, and it was the suggestion of Mr. Ashton's roadmaster that you follow Mr. Ashton down on his permit, do you foresee that as proper protection?

A. (by Claimant): Yes, sir”.<sup>6</sup>

There is no dispute that the only ways in which equipment is permitted on a track is if the following steps are taken. Either a Foreman has to follow the clear protocols of Rule 6.2.1 or a Foreman has to get explicit permission from another Foreman, who does have clearance, to move equipment under his protection. The Claimant did none of this when he moved his equipment out of Belmont, Nebraska onto the main line on his way to

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<sup>6</sup>Trans. @ p. 33. In it Submission the Organization refers to the suggestion by the Gang Roadmaster as an “instruction” (Submission @pp. 6 & 18). In fact, the Roadmaster had no authority to give such an instruction. The Roadmaster testified that he only made a suggestion. Track bulletins cannot be granted by Roadmasters. Nor is there any evidence in the record that a Roadmaster has the authority to require one Foreman to move equipment under the track and time of another. Safety on the railroad requires that Foremen keep these fundamental distinctions straight.

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Crawford, Nebraska on the date in question. The Claimant moved equipment onto a track which he had no authority to be on. On merits the Board has no alternative but to rule that the Carrier has met its burden of proof in this case as moving party and that the Claimant was in violation of Rule 6.3.1 and company policy. The Claimant was moving equipment without track and time, **and/or** without flags which could have been applied to the CTC territory in question,

The Board has reviewed the Claimant's prior record. In view of this and the severity of the infraction at bar in this case the Board must rule that the Carrier's determination in the instance case is neither arbitrary nor capricious.

**Award**

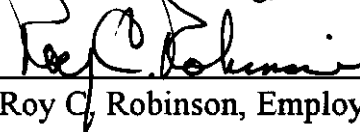
The claim is denied.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: 7/30/01