

## Public Law Board No. 6204

### **Parties to Dispute**

Brotherhood of Maintenance of Way  
Employees

vs

Burlington Northern Santa Fe

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**Case 3/Award 3**

### **Statement of Claim**

1. That the dismissal and subsequent reinstatement to service on a leniency basis imposed on Machine Operator R. J. Meek for alleged violation of the Maintenance of Way Operating Rules was improper and unwarranted.
2. That Machine Operator R. J. Meek be compensated for all time lost and that his record be cleared accordingly.

### **Background**

The Claimant was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with his failure to operate a BNX bulldozer in a safe manner. According to the charge filed against him by the Carrier the Claimant allegedly fouled the main track of the Carrier at or near MP 593.1 which is located in the vicinity of Wyodak, Wyoming on the Carrier's Black Hills Subdivision. This incident occurred at or about 2:30 PM on January 23, 1997 while the Claimant was assigned as a Group 2 Machine Operator. After an investigation into this incident took place on February 6, 1997 the Claimant was advised that he had been found guilty as charged and he was discharged from the service of the Carrier. This discipline was appealed properly by the Organization on March 18, 1997 and thereafter under provisions of the Railway Labor Act and the operant Agreement. After conferencing the claim an agreement was reached between the Organization, as representative of the Claimant and the Carrier to reinstate

the Claimant on leniency basis with proviso that time out of service could continue to be appealed. The Claimant was advised on July 1, 1997 by the Manpower Planning Department of the Carrier to present himself for reinstatement in accordance with operant policy and stipulations of the leniency agreement. Relief involved here, therefore, is from time Claimant was discharged from service until the time he could have reasonably been rehired after the July 1, 1997 notice cited in the foregoing.

### **Discussion & Findings**

A review of the transcript of investigation shows that the Claimant was operating a bulldozer on the right of way and near the main track in the vicinity of Wyodak, Wyoming on January 23, 1997. He was operating the equipment within what is called the foul of the track. The latter is defined in the Maintenance of Way Operating Rules as follows:

Foul of Track: Within 8 feet of the nearest rail on main track or controlled sidings and within 5 feet of the nearest rail on other than main track and controlled sidings.<sup>1</sup>

While operating a bulldozer on the day in question near the train tracks the Claimant got it stuck in the mud. According to testimony at the investigation by the Roadmaster the machine which the Claimant had been operating was foul of the main tracks when it got stuck in the mudhole. This was corroborated by testimony by the Foreman. Both the Roadmaster and the Foreman did measurements of the distance, of the tracks made by the bulldozer after it had been pulled out of the mud, to the main line and both concluded that the Claimant had been operating the machine foul of the tracks. These factual conclusions are not at dispute in this case.

At the investigation the Claimant testified that he did not have track authority to work

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<sup>1</sup>Carrier Exhibit 8.


fouling the main track. He had called the Control Desk Operator at Gillette, Wyoming but this operator did not have authority to grant track and time authority.

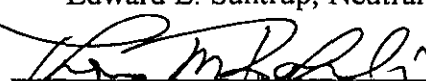
No other conclusion is warranted in view of the record before the Board than that the Claimant was in violation of the Carrier's operating rules on the day, and at the location, in question. The claim cannot be sustained. Safety is a constant concern in this industry and the procedures used by the Claimant were not safe.

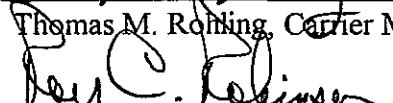
In view of the Claimant's prior record, which the Board here considers only with respect to the issue of the quantum of discipline, the Board concludes that it is in no position to disturb the Carrier's determination in this case. The Board will rule accordingly.

**Award**

The claim is denied.

  
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Edward L. Suntrup, Neutral Member

  
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Thomas M. Rohling, Carrier Member

  
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Roy C. Robinson, Employee Member

Date: December 15, 1999