

PUBLIC LAW BOARD NO. 6284

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

-and-

Burlington Northern-Santa Fe Railway

AWARD NO. 13

CASE NO. 13

STATEMENT OF CLAIM:

That Engineer S.E. Cousineau's discipline be reversed, that he be made whole for any and all time lost, and that the notation on his personal record as a result of this incident be removed.

FINDINGS:

This Public Law Board No. 6284 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

The Claimant, Engineer S. Cousineau, was notified by Carrier letter dated May 19, 1998 that he was found responsible for violation of rules 6.3 and 14.1 of the General Code of Operating Rules and as a result was assessed a Level S thirty day actual suspension as follows:

This letter will confirm that as a result of formal investigation on May 11, 1998, concerning your occupying main track at Ellensburg Washington with proper authority, while working as engineer on train UFTLPOM1-16, you are issued a Level S Suspension of thirty days for violation of rules 6.3 and 14.1 of the General Code of Operating Rules. Additionally, you have been assigned a probation period of three years. If you commit another serious rule violation during the tenure of this probation period, you will be subject to dismissal.

Your suspension will commence on April 19, 1998. Any scheduled vacation, leave of absence, or furlough during this time will extend your suspension by the corresponding number of days that fall within the suspension period. You will be reinstated to service on May 19, 1998.

This letter will be placed in your personal file. Your signing below serves as receipt of this suspension.

Respectfully,

s/G.A. Filcher
Trainmaster

The discipline was appealed by the Organization, and is now properly progressed to this Board for adjudication.

No basis exists to set aside the discipline as to the procedural contentions made by the Organization in this case.

On April 18, 1998, Mr. Cousineau was called to duty to operate Train UFTLPOM1-16 in freight service. Prior to operating Train UFTLPOM1-16, the Claimant reported to Pasco, WA, and received by electronic transmission Track Warrant Form Number 412, which contained Item 16 identifying the track bulletins in effect at the time. Upon arrival at Ellensburg to receive Train UFTLPOM1-16, the Claimant received by electronic transmission Track Warrant 417. The electronic transmission of this warrant was addressed to Train UFTLPOM1. However, the actual track warrant identifies the user by engine number. This particular warrant was addressed to engine number BNSF 9784. After initiating movement of the train, the Conductor noted that the train's engine number was actually BNSF 9794. At this point the Claimant and his Conductor were still within restricted yard limits and maintained their authority to be on the main track just by virtue of moving the train at restricted speed. Approaching TWC territory the Conductor contacted the dispatcher in order to change the track warrant and have it reissued with the correct engine number. Mr. Cousineau testified in part as follows as to the first contact with the dispatcher.

256. Q. You did not realize that the track warrant was not matching the locomotive?

A. Not until we got on the train there.

257. Q. So, you have your warrant now, and you start to pull. Did you then have

contact, conversation with the dispatcher on the radio?

A. We did a stub test first.

258. Q. Okay.

A. And, then we started to, after the stub test we started to roll, and the conductor noticed the engine numbers were bad, almost immediately. And, I told the dispatcher at that point. We had one crossing blocked, already.

259. Q. Okay. What, did the dispatcher come on then?

A. No sir.

260. Q. How long before he came on?

A. Quite a while.

261. Q. Did you continue...

A. Phoned him three times before he ever responded.

262. Q. During this time period were you continuing to move east?

A. Correct, we're still in restricted limits and we had two crossings blocked at this point.

263. Q. The dispatcher finally comes on the air after some time. What was your conversation with that dispatcher?

A. Just what Ed Harris said was exactly what happened. And, we thought that he would immediately change it. And, then he just dropped it, he went and talked to the chief, and now we have three crossings blocked.

264. Q. Okay. Was that the first time you contacted him, you were in restricted limits, you say? What was your conversation?

A. To the best of my knowledge, yes we were.

Claimant continued with his train outside of yard limits and into TWC territory in order to clear up two public crossings his train was blocking and then stopped the train at MP 125, which was just inside of TWC territory. He then was able to contact the dispatcher a second time. The crew was thereafter issued a corrected warrant, identifying engine 9794, and the train proceeded to Pomona, WA. Upon hearing that the Claimant's train was in TWC territory when he received the corrected warrant, local Carrier officers removed him from service pending a formal investigation for allegedly occupying the main track

without proper authority.

On BNSF there is no place on the actual track warrant that identifies the train symbol, and the rule as written requires an engine number identification. The electronic transmission "cover sheet" or cover heading was in fact addressed to the train symbol. The cover heading, however, is not part of the authorizing document for TWC territory. The reason that the symbol is not used is because it is not necessarily unique to one train. Train symbols are only used to designate the type of train and the route it will travel. For example in the instant claim, the cover heading was addressed to UFTLPOM1. This symbol designates a Unit train traveling from Fort Lewis to Pomona WA. During all radio transmissions to the dispatcher, other trains and employees including Maintenance of Way personnel, the crews are required to identify themselves by the engine number not by symbol. No two engine numbers are the same and this is the safest way to maintain exact identification.

Substantial evidence of record supports the Carrier's determination that the crew in question allowed their train to occupy main line track without proper paperwork or authority. Mr. Cousineau and his crew should have stopped their train before entering TWC territory, having discovered the typographical error. Appropriate corrective discipline was in order. And a ten calendar day actual suspension is a heavy economic burden on an individual and appropriate to serve as a corrective disciplinary measure under the specific facts of this particular case. The track warrant was addressed to the correct computerized train symbol, and the warrant contained the correct date and time, as well as the correct dispatcher. The crew knew they had the correct train. The dispatcher was notified immediately upon discovery of the typographical error. No public safety concerns were in fact evident in the record before this Board. All parties knew there were no other trains in the area. Road Foreman Furey testified

59. Q. Was there any immediate danger to the general public with this train being out on the main line?

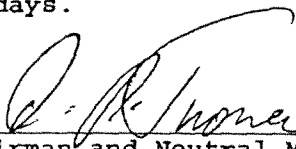
A. No, I don't believe so.

We find that the discipline of a thirty day actual suspension to be excessive and the discipline shall be reduced to a ten day actual suspension. The three year probationary period must be removed from the Claimant's record.

AWARD

As per Findings.

ORDER: The Carrier is required to comply with this award within thirty days.


Chairman and Neutral Member


Employee Member


Carrier Member

Dated: 