

**PUBLIC LAW BOARD NO. 6564**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**and**

**CSX TRANSPORTATION, INC.**

**Case No. 33**

**Statement of Claim:** It is the claim of the System Committee of the Brotherhood that:

1. The thirty (30) day suspension assessed Assistant Foreman N. L. Harris for his alleged responsibility in connection with throwing a mainline switch and allowing an anchor cart to occupy the mainline without the permission of the Employee in Charge of the 707 on August 11, 2003, was without just and sufficient cause and based on an unproven charge [System File D21128003/12(03-0804)].
2. Assistant Foreman N. L. Harris shall now have his record cleared of this incident and be compensated for all losses suffered.

**Background:**

Claimant N. L. Harris was hired by the Carrier on June 17, 1974. At the time of the incident involved herein, Claimant held an assistant foreman position on the 6XT1 system production gang, working near Palatka, Florida. At approximately 7:00 p.m. on August 11, 2003, a job briefing was held for 6XT1. Foreman M. M. Crowder was the employee-in-charge (EIC) and held Rule 707 mainline track authority, controlling the movement of equipment from other tracks to the mainline. Prior to 6XT1's job briefing, Crowder informed Foreman Charles Bennett that one train had to pass through the work authority area before 6XT1 could go out onto the mainline track. At the time of the job briefing, Crowder had left the job briefing area in order to facilitate communication with the train. Bennett conducted the job briefing, which was also attended by Team Leader

Pete Crutchfield. While the job briefing was taking place, at approximately 7:20 p.m., a train passed through and Crutchfield called attention to the fact that it was engine number 7610.

After the job briefing ended, Claimant and the other members of 6XT1 went to their various work locations. Claimant threw the switch at the Wood Yard track and allowed an anchor cart to move onto the mainline track. In the meantime, Bennett had radioed Crowder to ask whether 6XT1 had permission to occupy the track. Crowder informed Bennett that he had cleared a second train to pass through. Bennett then became aware that Claimant had thrown the switch and fouled the track, radioed Crowder to stop the train, and radioed Claimant to tell him to clear the track. The train was successfully stopped, and the track cleared. About ten or fifteen minutes after the job briefing had ended, the second train passed through the work authority area without incident. Crowder then spoke with Bennett and gave permission for 6XT1 to occupy the track.

By letter dated August 15, 2003, the Carrier instructed Claimant to attend a hearing:

To determine the facts and place your responsibility, if any, in connection with you throwing a mainline switch and allowing an anchor cart to occupy the mainline without the permission of the Employee in Charge of the 707....

You are charged with the violation of CSXT On-Track Worker Safety Rule 707, CSXT Safeway Rule E-6 Part A, and violation of the Life-Critical Rule "Track Authority Violation" and you will be Withheld From Service until this matter is resolved.

Rule 707 provides: "No movements will enter the limits of the work authority unless permitted by the employee-in-charge. Permission must be given by oral permission of

the employee-in-charge....” Safe Way Rule E-6 Part A provides that track protection must be in place when an employee is working within four feet of the track. Life-Critical Rule “Track Authority Violation” identifies occupying track without authority as one of five offenses that automatically garner an employee a thirty-day suspension for the first offense.

The hearing was held on September 10, 2003. On September 24, 2003, the Carrier assessed Claimant a thirty-day actual suspension. The Organization appealed by letter dated October 15, 2003. The matter was discussed in conference on January 15, 2004, after which the Carrier affirmed its imposition of the suspension. The parties failing to resolve the matter, it is presented to this Board for final decision.

**Carrier’s Position:**

The Carrier contends that Claimant was afforded a fair and impartial hearing, at which substantial evidence of Claimant’s guilt was presented. According to the Carrier, the evidence of record demonstrates that on August 11, 2003, Claimant threw the switch to allow an anchor cart to occupy the mainline track without the EIC’s permission, violating Safety Rule 707. Both Crutchfield and Bennett stated at hearing that no permission had been given to anyone at any time during the job briefing to throw the switch and occupy the mainline track. The Carrier argues that Crutchfield and Bennett’s testimony was supported by Claimant’s testimony on his own behalf and that of machine operator J. L. McMeans because neither Claimant nor McMeans stated at hearing that Claimant had been given permission to throw the switch and occupy the mainline track. The Carrier submits that Claimant’s action constituted a serious offense for which thirty days actual suspension is prescribed under the Carrier’s Life-Critical Rules policy.

**Organization's Position:**

The Organization contends that the Carrier failed to prove the charges against Claimant. According to the Organization, although Claimant threw the switch to allow equipment to occupy the mainline track while a train was being waived through the Rule 707 track authority area, the Carrier did not establish that Claimant's action was contrary to instructions. The Organization argues that the evidence presented at hearing demonstrated that Bennett told Claimant and the other 6XT1 members that after one train had passed they could go to work on the track. When a train passed before the job briefing was concluded, the Organization asserts, everyone on 6XT1 understood that they were to get to work on the mainline track. The Organization submits that Claimant acted as he had been instructed. Bennett did not learn there was a second train until after the gang had gone to their work locations following the job briefing, demonstrating that "[t]he exchange of information between the employee providing the protection [Crowder] and the foreman in charge of the work force [Bennett] was not sufficient and left everyone, including the foreman and the supervisor, to guess and not actually know." Org. Exh. A-2 at 1. The Organization argues that despite these communication issues between Crowder and Bennett, only Claimant was charged with any violation in relation to the August 11, 2003, incident. In these circumstances, the Organization contends, the Carrier improperly imposed discipline upon Claimant and the thirty-day suspension should be removed.

**Findings:**

The Carrier contends that on August 11, 2003, Claimant acted in violation of On-Track Worker Safety Rule 707, Safe Way Rule E-6 Part A, and Life-Critical Rule "Track Authority Violation" when he threw the switch to allow an anchor cart to move from the Wood Yard track onto the mainline track. In support of its contention, the Carrier cites Bennett and Crutchfield's testimony at hearing that at no time during the job briefing was Claimant instructed that 6XT1 had EIC permission to go out onto the mainline track. Bennett testified that although he likely said that 6XT1 was "supposed to have the track" after one train, he did not tell Claimant or anyone else to go ahead and occupy the mainline track after one train had passed. Car. Exh. B at 13, 31. Bennett's testimony is supported by Crutchfield's statement at hearing that no one during the job briefing told Claimant he had permission to throw the switch and occupy the mainline.

The testimony of these two witnesses, however, is countered by the testimony of J. L. McMeans and Claimant himself. Both McMeans and Claimant testified that it was standard practice for the gang to be told they could go out on the track after a specific number of trains. McMeans testified:

[T]hat's a normal process. We've been using it ever since I've been in T-1, ever since 1996 ... when you tell me ... we got one train. When that one train passes, we got the track, what that telling me? To let my equipment out and we go to work.... When they said "We got two trains, it's a normal post," we say "all right guys, it's the last train, let's go to work, got the track."

Car. Exh. B at 28. Claimant testified similarly:

Q. [S]aying after one train you've got the track, or after two trains you've got the track, is that a common practice?

A. That is correct.

Q. And if the supervisor or the foreman tells you after one train or after two trains you've got the track, what does that mean to you?

A. It means that we got the track, go out and line the track and go to work.

Car. Exh. B at 48. McMeans testified that Bennett told the 6XT1 members "We have one train, and after this one train we can go to work." Car. Exh. B at 24. Claimant testified that Bennett "said after one train we got the track ... he said 'Let's go to work.' ... 'We got the [track] after one train ... that 7610,' that's what the whole team understood, not only me, the whole team." Car. Exh. B at 39-40. When asked, "[Bennett] didn't say 'We're supposed to have it' ... he said 'We got the track'?", Claimant answered, "You can ask the other[s] ... 'After one train we got the track.'" Car. Exh. B at 40-41.


According to McMeans, it was his and other 6XT1 members' understanding at the end of the job briefing that both Bennett and Crutchfield believed it was okay for 6XT1 to occupy the mainline track.

Based on the evidence of record, the Board finds that the Carrier did not prove the charge against Claimant. Whether or not Bennett explicitly stated in the job briefing that 6XT1 had EIC permission to occupy the mainline track, that is nevertheless what Claimant and other members of 6XT1 heard. Claimant acted according to Bennett's instructions as he understood them. He believed that the gang had received EIC permission to occupy the track and he was not alone in that belief. Clearly, somewhere along the line from Crowder to Bennett to Claimant and the others, there was a miscommunication. However, Claimant cannot be singled out for discipline on the basis of that miscommunication. The Board finds that the thirty-day suspension was not warranted and the Organization's claim must be sustained.

PLB 6564  
Awd 33

**Award:**

The claim is sustained. The thirty-day suspension shall be removed from Claimant's record and Claimant compensated for all lost wages.

  
JOAN PARKER, Neutral Member

  
CARRIER MEMBER

  
ORGANIZATION MEMBER

DATED: 05-18-05

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