

PUBLIC LAW BOARD NO. 5604

Case No. 12

Award No. 12

Parties To Dispute: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Claim of Engineer C.L. Funk for removal of thirty (30) day suspension from his personal record and pay for all time lost.

Findings:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On October 3, 1994, the Claimant was working as an Engineer in interdivisional pool service between North Platte and South Morrill, Nebraska. Conductor Fisher was assigned with him. The Claimant and Conductor Fisher tied down their original train at MP 222 and were transported to MP 1689 to provide relief service for Train CHPR01-30 (UP6197 East).

The Claimant and Conductor Fisher boarded Train CGPR01-30 at MP 168.16 and received permission to operate on the main line to MP 168. After moving approximately four (4) car lengths Conductor Fisher contacted the Yoder Dispatcher who advised him that he needed a track warrant to operate east of MP 168 on the main line. The Claimant immediately stopped the train while Conductor Fisher copied Track Warrant No. 2788 authorizing them to operate between MP 168 and MP167. After the track warrant was copied Train CGPR01-30 operated to MP 165 where the crew went off duty.

The Claimant was held out of service and notified to attend a formal investigation on October 7, 1994, to develop the facts and determine responsibility, if any, allegedly for occupying main track between MP 168 and MP 167 without authority. On October 14, 1994, the Claimant was assessed a thirty (30) day suspension for this reputed violation of the Carrier's General Code of Operating Rules.

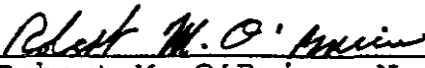
It is the Carrier's burden to establish by substantial evidence that Train CGPR01-30 occupied the main line beyond MP 168 before receiving Track Warrant No. 2788 authorizing him to proceed east from MP 168 to MP 167. The Carrier has not sustained that burden of proof, in the opinion of this Board.

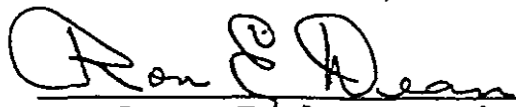
The evidence adduced at the Claimant's October 7, 1994 investigation did not conclusively establish where the head end of Train CPGR01-30 was when the crew was issued a track warrant authorizing them to operate from MP 168 to MP 167. Neither the Claimant nor Conductor Fisher believed they were beyond MP 168 when the track warrant was copied. There was no marker at MP 168 four days after this incident and it is possible that there was no marker there on October 3, 1994 either. Conductor Fisher did not tell the Yoder Dispatcher they were beyond MP 168 when he contacted him at 9:46 p.m. on October 3, 1994. Track Warrant No. 2788 states that it was copied at MP 168.

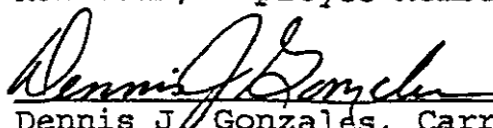
Based on all the foregoing, this Board finds that the Carrier has not proven by substantial evidence that the Claimant occupied the main track between MP 168 and MP 167 without proper authority. Accordingly, the discipline assessed him on or about October 14, 1994 was improper and must be set aside. The instant claim must be sustained as a result.

Award: Claim sustained.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.

  
Robert M. O'Brien, Neutral Member

  
Ron Dean, Employee Member

  
Dennis J. Gonzales, Carrier Member

Dated: