

PUBLIC LAW BOARD NO. 5850

Award No. **185**
Case No. 185

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad (Former
(ATSF Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on December 18, 2000, Mr. D. A. Rodriguez was issued a Level-S, 30-day record suspension with a three year probationary period for violation of Rule 6.3.1, Track Occupancy, of the Maintenance of Way Operating Rules, and violation of Rule S-1.1 of the Maintenance of Way Safety Rules in connection with his alleged occupation of the main track and/or siding without authority between switches at Tangier, Oklahoma, MP 392.52 - MP 394.52, Panhandle Subdivision at approximately 1015 hours on Monday, October 30, 2000.

2. As a consequence of the Carrier's violation referred to above Mr. Rodriguez shall have his record expunged of the above referenced discipline.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

Claimant received a letter from the Carrier dated November 2, 2000, advising him of an investigation to determine his responsibility, if any, with the alleged violation of Rule 6.3.1, Track Occupancy, when he allegedly occupied the main track and/or siding without authority between switches at Tangier, Oklahoma, at approximately 1015 hours

on Monday, October 30, 2000, while assigned as a Machine Operator on the Amarillo Division.

The investigation was convened November 29, 2000, after which Claimant was assessed a record suspension of 30 days.

There exists no controversy. Claimant did exceed his track authority by going beyond the limits the Dispatcher had set. Claimant's only defense was that he was new to the territory so he blindly followed the Lead Machine Operator who stated he was familiar with the territory. There was no conference between the three Machine Operators to discuss the train order or the movement of the equipment. Claimant did copy the train order although the Dispatcher sought only the Lead Operator's acknowledgement.

Claimant has been with the Carrier since April, 1977, and has only one recorded disciplinary mark on his record. Ordinarily that would be considered as a mitigating circumstance, but train orders are the lifeblood of the operating system and any failure to adhere thereto can and have led to disastrous results, even to fatalities. Claimant, with all his years, should have been twice as cautious when moving into unknown territory rather than blindly follow another. Claimant readily admitted he knew he was responsible for himself. Claimant should have requested a conference with the Lead Machine Operator, even if the Lead Machine Operator was careless and did not request a conference.


The Carrier has sufficient evidence of Claimant's culpability for the charges assessed. Even though Claimant has a relatively clean disciplinary sheet for his 23 years service, the seriousness of not following train orders cannot be mitigated.

AWARD

Claim denied.

ORDER

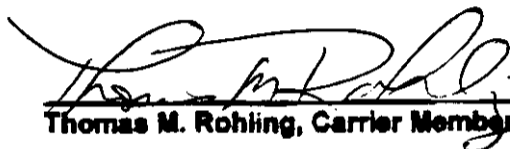
This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: December 27, 2001