

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6041**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
GENE L. SHIRE, CARRIER MEMBER
DON HAHS, EMPLOYEE MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE**

and

**BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY**

**Award No. 40
Case No. 40
Engineer K. L. Hallford**

*Date of Hearing - March 21, 2000
Date of Award - May 14, 2000*

Statement of the Issue

The Chairman and Neutral Member, after review of the entire record, has determined that the issue before this Board is:

Was Carrier justified in assessing Claimant Engineer K. L. Hallford 20 days actual suspension and 3 years probation for his alleged failure to verify the accuracy of his Track Warrant routing prior to departing El Paso on December 16, 1996?

FINDINGS:

Public Law Board No. 6041, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein.

According to the record presented before this Board, Claimant was called from the El Paso Extra Board for Train M-EPBE-16, a road manifest assignment operating between El Paso, TX and Belen, NM. As is customary, Claimant and his 2-man ground crew departed El Paso with a written Track Warrant, issued by the dispatcher and Faxed to his departure yard, which contained operating instructions for the specific route appearing at the top of the warrant. (Carrier advises the Board that these Track Warrants itemize variations from the prescribed operation in any given corridor, and may contain speed restriction orders, track condition messages, and/or maintenance bulletins generated automatically by computer once a specific route is input by the dispatcher authorizing train movement.) In this case, the dispatcher authorizing the movement of Train M-EPBE-16 *properly* addressed the Track

Warrant to that train and engine, but *improperly* routed the train from El Paso to Rincon, an intermediate point along the way to Belen.

Because Claimant and his crew failed to note this error prior to departing El Paso, they were not in possession of all bulletins affecting the entire intended route of their train. One of these was Engineering Department Form B Track bulletin #3331, authorizing men and equipment to occupy the Main Line between MP 1012.3 and MP 1005.0. Fortunately for all involved, the Track Foreman in charge of that Form B was called away to another location, and at approximately 12:00 pm, he initiated attempts to contact the dispatcher in order to void that bulletin. (The Board notes that Bulletin #3331 was originally valid until 3:00 pm on December 16, 1996.) According to the record, Claimant and his crew, who were by this time passing MP 1020, overheard the radio communication of the Foreman attempting to void his Form B, and realized they were approaching the limits of a bulletin they did not have in their possession. They stopped their train, contacted the dispatcher in order to determine why their orders were inaccurate, and then discovered that the Warrant under which they were operating was invalid and incomplete due to the previously mentioned routing error. Claimant was subsequently authorized to move his train to San Marcial, where he and his crew were relieved from duty.

By letter dated January 6, 1997, Claimant was directed to attend a formal investigation in connection with his alleged violation of, among others, System Special Instruction 31, which states:

System Special Instruction 31 - Securing Track Warrants

When reporting for duty at initial terminal, a crew member will secure track warrants, track bulletins, and track condition messages when required. Except in CTC territory, a crew member must contact the dispatcher before departing to determine if additional track warrants, track bulletins, and track condition messages are required, and advise if all crew members are present and ready to depart.

At locations where track warrants are received by printer or FAX, crew members must verify that the route description at the top of track warrant, if so printed, covers the intended route of their train. If it does not, contact the train dispatcher and determine if the track warrant is valid. Also, crew members must check the date and "OK" time on track warrant and if track warrant is over three (3) hours old, contact the train dispatcher and determine if the track warrant is still valid.

During the February 4, 1997 investigation, a complete transcript of which was furnished this Board for review, testimony was elicited from one of

the two investigating Carrier officers, the Train dispatcher involved, the Track Forman who had secured the Form B on December 16, 1996, and Claimant himself. In essential element, all testimony offered at the hearing confirmed the sequence of events as outlined herein, and further contained a statement by Claimant (page 38 of the transcript) wherein he admitted that he had, indeed failed to comply with provisions stipulated in paragraph 2 of System Special Instruction 31 cited above. However, he considered that transgression to be a minor one according to his closing comment at page 98.

Claimant, by letter dated February 26, 1997, was issued a Level S 20-day actual suspension, placed on three years probation, and in due course, the following time claim was presented:

"Claim for El Paso Subdivision Engineer K. L. Hallford for all time lost while being withheld from service from the Burlington Northern and Santa Fe Railway Company while serving a twenty (20) day suspension including pay for attending the formal investigation and that Engineer Hallford's personal record be expunged of any further reference to the incident of December 16, 1996."

Before this Board, the Organization contends that Carrier's case is fatally flawed on a number of procedural grounds, one of which alleges impropriety based upon the fact that an official who investigated this incident also served as Chief Hearing Officer on February 4, 1997.

In this particular case we do not find the Organization's contentions persuasive. As there is no evidence that Claimant was prejudged, the essential facts at issue are not in dispute, and he openly admits to having neglected the one provision in System Special Instruction 31 that would have prevented the entire incident in the first place. To their credit, neither Claimant nor his representatives attempt to veil this fact, but admissions of guilt are not, in and of themselves, mitigating or exculpatory. While this Board acknowledges that the train dispatcher may have made the initiating error, we feel quite safe in assuming that the language of Special Instruction 31 was manifestly designed to safe-guard this type of a scenario.

It is not within our province to distribute or, in effect, rank culpability for the incident at bar, specifically with respect to the train dispatcher's involvement in events which transpired on December 16, 1998. The sole assignment before this Board, once procedural questions have been cleared away, is to determine whether or not Carrier adequately fulfilled its contractual burden to prove its charge against Claimant, and if, in so doing, it applied the appropriate remedy. On the first question, we find in the affirmative, particularly in light of Claimant's own admission. We therefore need only comment in detail upon the latter. Of particular concern to the Board on this point, is evidence contained in the record indicating that prior to the hearing, Claimant was offered the opportunity to waive investigation in exchange for a Level S 20-day actual suspension and one year's probation. He, as is readily apparent, declined, electing instead to exercise his right under the controlling Agreement for due process. Subsequent to the hearing, during

which no additional convicting evidence was introduced, Carrier assessed the same Level S suspension it previously offered, but upped the ante to 3 years' probation rather than one. Carrier's action to that end was suspect, in that it appears to have additionally penalized Claimant for his decision to decline the waiver offer and go forward with a hearing. The Board notes, however, that by letter dated July 30, 1998 (Carrier Exhibit 5), Carrier proposed reducing the 3-year probation to a 1-year probation in an effort to dispose of the instant dispute on the property; an offer plainly rejected by Claimant and his representatives. Upon the whole of the record, then, we note that, its action subsequent to the hearing notwithstanding, Carrier considered its original offer of 20 days' suspension accompanied by a 1-year probation appropriate discipline in this case. In view of Claimant's admitted negligence, the consequences of which, under other circumstances, could have proven dire indeed, this Board agrees. In so doing, we are guided to reduce the 3 years' probation assessed for the incident at bar to a 1-year probation, while upholding the Level S 20-day actual suspension. Carrier is hereby directed to adjust Claimant's service record accordingly.

AWARD

The issue before this Board:

Was Carrier justified in assessing Claimant Engineer K. L. Hallford 20 days actual suspension and 3 years' probation for his alleged failure to verify the accuracy of his Track Warrant routing prior to departing El Paso on December 16, 1996?

is answered in the negative, "No". The claim is sustained as set forth in the findings.

ORDER

Carrier is directed to comply with this Award within thirty (30) days of the date indicated below.



John C. Fletcher, Chairman & Neutral Member



Gene L. Shire, Carrier Member



Don Hahs, Employee Member

Dated at Mt. Prospect, Illinois, May 14, 2000