

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(Burlington Northern Santa Fe Railway (former St. Louis-  
(San Francisco Railway Company)

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when dismissing Mr. Mantel Griggs from service on June 19, 1997, for allegedly instructing his crew to occupy the main track in the vicinity of Holly Springs, Mississippi without first obtaining authority to occupy the track from the Train Dispatcher.
2. As a consequence of the Carrier's violation referred to above, Claimant should (sic) be reinstated to service with seniority and all other (sic) rights unimpaired, paid for all time lost and the discipline shall be removed from his record.

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, a Foreman, was charged with failure to secure proper authority before occupying a main track on June 18, 1997.

Pursuant to the current contract, after the Carrier investigated the incident, Claimant was dismissed from Carrier's service and that dismissal was reaffirmed following a timely requested investigation.

From the investigation transcript, the Chief Dispatcher contacted the Roadmaster indicating that it was his belief that some track machines were fouling the main line at Holly Spring. It did develop that machines working with Claimant's gang did occupy the main line without track authority. They did so at the Foreman's instructions who indicated the track authority had been obtained by another Foreman who was working in the vicinity.

Apparently, it is rather common for one crew to occupy the main line using track authority

obtained by another, but customarily, the crew piggy-backing on another's authority initials the track authority order which should indicate the initialer was aware of the parameters and time of the authority.

Claimant insisted that he cleared it with the other Foreman (which the other Foreman denied) to use that Foreman's track authority, but since he got clearance via the cell phone, he did not initial the authority order. Further testimony revealed that Claimant did not know the limits of the authority.

At this juncture, the entire incident could have been categorized as a sloppily handled matter that could have led to a catastrophic circumstance. However, one other element had been introduced at the investigation that convinces this Board that Claimant knew he did not have track authority, that what he did by sending his crew out to work on the main line without authority was wrong and a serious violation of the Rules. That element was testimony by a Signal Inspector and the Foreman who had the track authority. Both testified Claimant contacted each and asked that they lie about the incident. This element has never been rebutted by Claimant. It is obvious to this Board that Claimant was fully cognizant of his responsibilities, but callously ignored the Rules, the safety of his crew, the safety of other employees, and disregarded or ignored the potential calamity by not securing track authority for the protection of all concerned.

Discipline is surely warranted. Claimant must be aware that such action will not and cannot be tolerated, but a dismissal at this juncture does not reflect that his work history has been considered. Claimant has been working for this Carrier since November, 1968. His record prior to this incident shows one prior dismissal in 1986 (the reason is unknown), a disqualification as a Foreman in the early 80's (and a subsequent reinstatement of those rights), and a five day suspension in 1993 for a Safety Rule violation.

It is, therefore, the opinion of this Board that Claimant be reinstated to service with no pay for time lost, with all his seniority rights intact excluding his rights as a Foreman. His handling of the

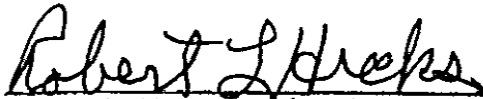
matter in this instance displays a serious flaw in his supervisory responsibilities.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.

  
Robert L. Hicks, Neutral Member & Chairman  
Public Law Board 6103

Dated:

