

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6198**

**JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER
A. C. HALBERG, CARRIER MEMBER
D. E. THOMPSON, ORGANIZATION MEMBER**

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
SLSW, GENERAL COMMITTEE**

and

**UNION PACIFIC RAILROAD COMPANY
(FORMER ST. LOUIS SOUTHWESTERN RY. CO.)**

**Award No. 6
Case No. 6**

*Date of Hearing - March 31, 1999
Date of Award May 24, 1999*

Statement of Claim:

Claim of Engineer D. E. Jones for removal of discipline assessed August 20, 1998 from personal record and payment for all time lost resulting from the investigation and suspension.

FINDINGS:

Public Law Board No. 6198, 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; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On Thursday, July 30, 1998, the herein Claimant, Engineer D. E. Jones was operating a train on the BNSF over the Wichita Falls Subdivision, between MP 45 and MP 90-2 under Track Warrant No. 550. At 2:17 p.m., the BNSF Dispatcher at Fort Worth called the train and talked to Conductor Hanes. What occurred in that fifty second conversation was recorded as:

Dispatcher: That's 4 Dispatcher, UP-7084 West. Over.

Hanes: UP-7084 goin' by a Drag Detector here by Milepost 82 - 8-2. Over.

Dispatcher: You're all by 82 -8-2. Its that correct? Over.

Hanes: That's correct.

Dispatcher: Okay, why don't ya hang on one second. Over.

Hanes: Okay, roger. Standin' by.

Dispatcher: Hold on B that's a force patch forward.

Hanes: Hello, Dispatcher?

Dispatcher: Ah, be that 4 Dispatcher, go ahead. Over.

Hanes: Yeah, let me be - oh, about Milepost 74, 7-4. Over.

Dispatcher: That's a 4 Dispatcher UP-7084 West. Over.

Hanes: UP-7084.

Dispatcher: Yeah you say you're by 82? Over.

Hanes: No sir, correction on that - by Milepost 74, 7-4. Over.

Dispatcher: Okay, I got - oh, well okay - okay, ah, thank you. Over.

(Tr. P. 8)

On August 5, 1998, Claimant was cited to attend an investigation on a charge that while working as a crew member he occupied a main line track with out proper authority. Following the investigation, Claimant was suspended for 30 days.

The Organization has appealed this matter to this Board on a variety of grounds, both procedural and substantive. None need to be visited in any great detail, because Carrier has failed to demonstrate, even slightly, that if Claimant's train did indeed occupy trackage without proper authority, that he, in any way, contributed to the violation, even remotely. What is involved, it can be easily seen, in a conversation between the Conductor and the Dispatcher, the Conductor incorrectly stated the location of his train. The Conductor immediately corrected this statement. If the Conductor's misstatement resulted in the train occupying a track without authority, surely responsibility for the event cannot be visited upon the Engineer, merely because he was in the crew at the time.

The claim has merit. It will be sustained.

A W A R D

Claim sustained.

O R D E R

The Board concludes that an award favorable to Claimant will be made. Carrier is directed to comply with this award, and to make any payments that may be required within sixty days of the date indicated below.

Fletcher

John C. Fletcher, Chairman & Neutral Member

for J. Halberg 5-31-99
A. C. Halberg, Carrier Member

D. E. Thompson
D. E. Thompson, Organization Member

Dated at Mt. Prospect, Illinois., May 24, 1999