

## Public Law Board No. 6204

### Parties to Dispute

Brotherhood of Maintenance of Way  
Employees

vs

Burlington Northern Santa Fe

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**Case 26/Award 26**

### Statement of Claim

1. That the discipline of Randy L. Anderson should be overturned in its entirety because Rule 40 of the current Agreement was violated and because this discipline is excessive and totally unwarranted. The discipline is also arbitrary and discriminatory, as employees with actual authority violations that actually endangered employees have not been suspended.
2. The discipline of a six (6) month suspension should be set aside and the Claimant should be made whole for all lost wages and benefits.

### Background

The Claimant was advised on March 19, 2001 to attend an investigation in order to determine facts and place responsibility, if any, in connection with his allegedly occupying a track without proper authority on the date of March 14, 2001. The Claimant was working on the Carrier's Sand Hills Subdivision at approximately 3:00 PM on the date in question when he allegedly occupied track without authority. The Claimant was also charged with failure to report a rule violation to the supervisor while he held assignment as a track inspector. When this alleged incident occurred with Claimant's headquarters were at Hyannis, Nebraska.

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After an investigation was held on March 27, 2001 the Claimant was advised on April 23, 2001 that he had been found guilty as charged.

He was assessed a six (6) month actual suspension for violating BNSF Maintenance of Way Operating Rules. The suspension ran from April 26, 2001 through October 23, 2001. This discipline was appealed by the Organization, and denied by the Carrier in the proper manner under Section 3 of the Railway Labor Act and the operant labor Agreement up to and including the highest Carrier officer designated to hear such. Absent settlement of the claim on property it was docketed before this Board for final adjudication.

**Discussion**

The Claimant to this case held assignment as track inspector on March 14, 2001. He was working the first shift from 7:30 AM to 4:00 PM. The record shows that the Claimant was granted authority by the dispatcher to occupy track No. 2 shortly before 3:00 PM. The authority was to last about 20 minutes until 3:20 PM. The authorization number was No. 10357. The Claimant had authority to occupy the main track from cross-over Mile Post 273.9 on the Sand Hills' Sub-Division to a switch which was located at Mullen, Nebraska.<sup>1</sup> Shortly after 3:00 PM, however, it is alleged that the Claimant called the dispatcher and requested to be released from authorization No. 10357. The dispatcher also granted this request. According to the record the section foreman then realized that the Claimant had released main track No. 2 while it was still occupied. According to

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<sup>1</sup> In the Carrier's Submission to this case the MP location is referenced, at one point, as Mile Post 237.9. This is

testimony by the foreman at the investigation he brought this to the Claimant's attention. Thereafter the Claimant again contacted the dispatcher and by receipt of authorization No. 10382 the main track between the two points of MP 273.9 and the switch at Mullen was again granted.

At the time of the incident the Claimant was running the rail detector and his job among other things was to get authority to protect the detector and the equipment of the road foreman so tests could be made on main track No. 2 and repairs made as needed.

Testimony by the road master of the Sand Hills Subdivision at the investigation with headquarters at Alliance, Nebraska, under whose authority the Claimant was working, is that on the date of March 14, 2001 it came to his attention by the chief dispatcher that the main track No. 2 had been unprotected for a short period of time because of actions by the Claimant.<sup>2</sup> He was advised of this about 4:00 PM. This was approximately an hour after the incident in question allegedly took place. A review of the MW Authority to Occupy Track on that Sub-Division by the Board, attached to the transcript of the investigation as Exhibit No. 2, confirms this testimony by the road master. So does the written transcript of the taped conversation between the dispatcher and the Claimant for that day.<sup>3</sup> The Claimant asked for the release of authorization No. 10357 and shortly thereafter requested protection again for the same track which was granted under authorization No. 10382. The lapse of time between these two actions was

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incorrect. The MP is 273.9 Viz. @ p. 2 of Carrier's Submission.

<sup>2</sup> Authorization No. 10357 was released at 3:04 PM. Authorization No. 10382 was obtained at 3:06 PM.

two minutes or less. Testimony by the road master is that the Claimant never advised him at any time about the short lapse of time when the main track over which he had authority had been unprotected. According to the road master it was proper procedure for him to have been contacted when an incident such as the one under scrutiny would have occurred. According to the road master's testimony he had instructed those reporting to him to do this when he took over as road master. All rule violations were to be reported.

There was testimony at the investigation by the section foreman who was headquartered in Mullen, Nebraska. He states that his job was to follow the rail detector starting at MP 247 going west on this Sub-Division. On the day in question he had a section truck on the track behind the rail detector. The Claimant's vehicle was pulled behind the section truck. The section foreman was accompanied by a truck driver. This witness reiterates that track and time authority has to be obtained between two points when there is repair equipment on the track. The authority was obtained by the Claimant. When the Claimant was in the process of releasing authority No. 10357 this witness states that he realized that he was releasing the wrong one to the dispatcher and he states that he tried to "butt in" but was unable to communicate with the Claimant until the authority had already been released by the dispatcher. He was then successful in getting his point across to the Claimant and it was shortly after that that the Claimant again contacted the dispatcher and requested the new authorization number. As was noted this whole process

took less than 2 minutes.

Testimony by the Claimant is that he did make a mistake when he gave the dispatcher the wrong authorization number and when the track foreman told him what he had done he immediately made a correction. He states that he did not advise the road master of this because for him it was a non-issue. He states that he would not try to hide anything from the road master. In this instance he did not feel like there was anything to report. A mental error had been made, admittedly, but immediately corrected before the dispatcher was even off the phone. According to the Claimant's calculations the amount of time involved was less than two minutes. He estimates that track protection was lost for less than a minute and a half.

### Findings

In view of the full record in this case the Board concludes as follows. There can be no doubt that there was a violation of Carrier's rules involving track occupancy (Rule 6.3.1). The amount of time involved was not egregious. But there was a violation nonetheless. In a safety conscious industry such as the railroad industry this Board may not set precedent wherein the violation of a rule dealing with track right-of-way is dealt with lightly. Secondly, Rule 1.4 clearly states that employees must report any violations to the proper supervisor. The road master stated in testimony that he had instructed those working under his watch that he wanted all violations reported to him. In stating this he was only reiterating what is found in the Carrier's written rules at Rule 1.4.

The Board can but underline the seriousness of the rules at bar in this case. On the other hand, the facts of this case are, nevertheless, quite idiosyncratic.

A mistake was made when the Claimant read the first authorization number to the dispatcher asking to be released from it. He admits this. Concurrently, a correction was made almost instantaneously while the dispatcher was still on the phone and a new authorization was provided to the Claimant. According to the Claimant, it was an honest mistake with an immediate correction since the dispatcher was still on the phone. It appears to the Board, from information of record, that this is correct. Further, once the dispatcher was apprised of the need for a new authorization he typed in the track number immediately which protected it before the time needed to give the new authorization number to the Claimant. In view of this the lapse for track protection might have been even less than one and a half minutes. While safety in this industry requires almost infallibility in following the rules, this Board recognizes that mistakes are made. But in this instance the mistake was admitted and almost immediately corrected. Certainly this must be factored in by a Board such as this in framing a ruling.

The Board recognizes the Claimant's upfront attitude in his testimony and closing statement at the investigation. He does not shy away from admitting having made an error. Rather: he states he made one and immediately corrected it. This board recognizes that this is what reasonable people do in order to avoid accidents.

Of somewhat greater concern to the Board, however, is that the Claimant did not

report the problem which was created, albeit immediately corrected, to the road master.

There was a time lapse: albeit immediately recognized and corrected. But there was a lapse nevertheless. The language of Rule 1.4 is unambiguously clear with respect to what ought to be done under such circumstances. It states that employees must "...promptly report any violations to the proper supervisor..." In not doing that the Claimant was in error.

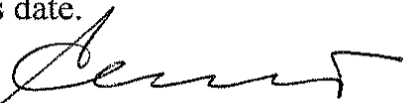
The Claimant to this case is an experienced, long-term employee. There is nothing in the record to show that he has not been a good employee and an asset to this employer. In view of this, the extenuating circumstances outlined in the foregoing, as well as the rule violations that did take place the Board is of the view that reasonable minds would conclude that discipline was merited but that the discipline assessed to the Claimant in this case was unduly harsh and unreasonable. The ruling by the Board, therefore, is that the discipline assessed will be reduced to ten (10) work days without pay. The Claimant shall be compensated by the Carrier for all additional time held out of service as a result of the discipline assessed by letter issued to him on April 25, 2001. The Claimant's record shall be amended accordingly. Compensation to be paid to the Claimant shall be at the rate of pay during the time held out of service.

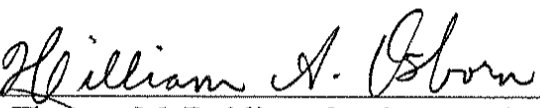
A representative from the Carrier and a representative from the Organization shall jointly meet in order to mutually agree on the proper amount of compensation to be paid to the Claimant as a result of the Award issued in this case.

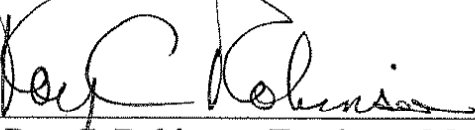
The ruling issued in Award No. 11 of Public Law Board No. 6204 shall apply in this case with respect to remedy.

**Award**

The claim is sustained only in accordance with the Findings. This Award shall be implemented within thirty (30) days of its date.

  
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Edward L. Suntrup, Neutral Member

  
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~~Thomas M. Rehling~~, Carrier Member

  
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Roy C. Robinson, Employee Member

Date: June 4, 2007