

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6394**

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 78
And)	
)	Award No. 78
Norfolk Southern Railway Company)	
(Former Norfolk & Western Railway Company))	
)	

Richard K. Hanft, Chairman and Neutral Member
Jed Dodd, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (discipline) of Messrs. W. Springer, B. Miles and L. Day, issued by letters dated December 21, 2015, in connection with their alleged improper performance of duty in that on November 20, 2015, they failed to ensure that the switch at Parish Foods, Mile Post IR 3.8 was properly lined and locked as normal before their work group gave the dispatcher permission at 2:00 p.m. to bring Train K43 through their limits at track speed, resulting in Train K43 entering the Industry track at Parish Foods, knocking off the derail and running through the industry gate before stopping was arbitrary, capricious and unwarranted (System File MW-HARR-15-38-LM-937 NWR).
2. As a consequence of the violation of the violation referred to in Part 1 above, Claimants W. Springer, B. Miles and L. Day shall receive the maximal remedy allowed under Rule 30(d) of the Agreement.”

FINDINGS:

Public Law Board 6394, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other cases.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

On November 20, 2015, Claimants in this matter were assigned to help install rubber at a grade crossing that was to be paved. B. Miles, who holds a bid-in position as an Electric Welder, was assigned to serve as RWIC for the crew's assigned tasks on that day. The record shows that he received Track Authority at 7:38 a. m. that morning. Claimants and one additional roadway worker completed that task by about 8:45 a.m. The RWIC assigned the roadway worker to remain at the crossing and assist the paving crew when they arrived.

Claimant Miles intended to pilot a consist of smoothing gang equipment operated by Claimants Day, Tamper Operator for the Day and Claimant Springer, usually a back hoe operator, from the Indian River Line to the Delmava Line. Both Day and Springer had Machine Operator seniority.

The Claimants proceeded to the equipment, a Tamper and a Ballast Regulator that was tied-up at MP 15.5. The RWIC dropped the other two Claimants off at the equipment and then proceeded to set the Hi-Rail Truck on at MP 15.55, drove it north of the switch, lined the switch and derail, flagged the equipment out and restored the switch and derail.

The RWIC was leading the consist in the High-Rail Truck followed by Mr. Day in the Tamper and Mr. Springer coming up the rear in the Ballast Regulator. RWIC Miles, during this move was contacted by Train K42 wanting to move south through his limits. The RWIC informed the train that he would clear the mainline by pulling the equipment onto the industry track at Parish foods at IR 3.8.

The record reveals that the RWIC stopped the High-Rail Truck at Parish Foods, opened the gate to the industry track, and removed the derail. While he was doing that, Claimant Day cleared, unlocked and lined the switch into the Industry track. The RWIC moved his High-Rail Truck to the next crossing and set the truck off the mainline while the equipment was being moved into the clear. The RWIC walked back to the spur and once the equipment was in the clear, restored the derail and switch and gave Train K42 time to pass. Once the train had cleared and he verified it would not be making a reverse move, he set the truck back on the mainline and trammed north to the Parish Foods switch, leaving room for the equipment to clear the switch. He removed the derail, threw the switch and flagged the equipment out onto the Main.

RWIC Miles testified at the investigation that he then locked the gate at Parish Foods, locked the derail and thought he locked the switch. The gang then trammed north without making a facing point move over the switch. All three Claimants testified at the investigation that they did not make a facing point move although they were aware of the Rule requiring the same. The equipment trammed to and was cleared at MP IR 1.1. The RWIC removed the High-Rail truck from the main and went back and picked up the operators. The crew then went to lunch.

At 2:00 p.m. Dispatch contacted the RWIC for permission to run Train K43 through his working limits at track speed. The RWIC granted permission. Train K43 received time and proceeded to run South through the limits.

At Parish Foods, K43's Engineer noticed that the switch was lined for the turnout move and threw the train into emergency. The train ran through the switch, knocked off the derail and ran through the Industry Gate before coming to a stop.

At the Investigation, Mr. Miles corrected the Hearing Officer's statement by emphasizing that he was sure that he restored the switch at Parish Foods, but all three (3) Claimants also testified that they knew that the Rule required them to make a facing point move, but they failed to do so.

The evidence adduced at the investigation clearly establishes that Claimants were negligent and disregarded the rules of the company in not performing a facing point move. Moreover, Rules 181 and 828 definitively places responsibility for restoring switches not only on the employee handling the switch, but also on the operators of equipment using the switch or derail equipment.

Claimants all admitted at the investigation that they failed to follow the rules. The Machine operators both admitted that they knew they were required, when possible, to make a facing point move. That move was quite possible, and required, under the conditions on that day. They were overly complacent. Complacency, in this industry can get people killed. While this was a most severe transgression, there were some unique circumstances that mitigate against dismissal.

Claimants were not in their normally assigned positions. The RWIC was normally assigned as an electric welder, but because of his foreman seniority, he was handling the switch and, while all Claimants were responsible, he was most responsible.

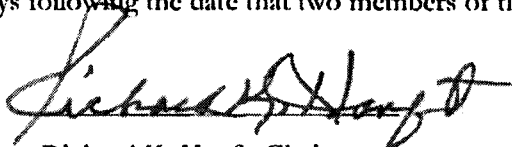
Of the several different moves that Claimant Miles coordinated that day, his only failure, while quite significant, was restoring the switch properly at Parish Foods. His co-workers should have been double checking him, but they too failed in their

Responsibilities. Otherwise, Claimants demonstrated that they could be valuable employees.


Thus, Claimants L. Day and W. Springer shall be reinstated, but without compensation for time out of service. Claimant B. Miles shall also be reinstated without compensation for time out of service, but with the additional condition that before exercising his foreman seniority again, he must go through the thirty (30) day qualifying period.

AWARD


Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date that two members of this Board affix their signatures thereto.



Richard K. Hanft, Chairman



Jed Dodd, Employee Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 2, 2018