

**PUBLIC LAW BOARD NO. 6935**

PARTIES	)	BROTHERHOOD OF MAINTENANCE OF WAY
	)	EMPLOYEES DIVISION - IBT RAIL CONFERENCE
	)	
TO	)	
	)	
DISPUTE	)	THE KANSAS CITY SOUTHERN RAILWAY COMPANY

**STATEMENT OF CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) day suspension, five (5) days to be served as actual time off and twenty-five (25) days to be a record suspension, which will not be served but recorded in Claimant’s personnel file as an actual suspension] imposed upon Mr. A. Brandon, by letter dated September 6, 2018, for alleged violation of General Code of Operating Rules 1.50 - Job Briefing amended by System Special Instructions; GCOR Rule 6.11.1 - Issuing or Voiding Mandatory Directives, Item C - Joint Authority amended by System Special Instructions; and The Kansas City Southern Railway Company’s Maintenance of Way General Order Number 2 - Joint Track Authority was severe, harsh, imposed without the Carrier having met its burden of proof and in violation of the Agreement (System File KCS705SN18D/2018-0445 KCS).
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Brandon shall now:

‘\*\*\* be returned to his current assignment with all rights unimpaired, compensated for any lost time or expense incurred as a result of these proceedings, that all charges be dropped, and any and all references to this incident stricken from his respective record.

We therefore contend that certain rules of our current working Agreement have been violated, especially Rule 13, DISCIPLINE AND GRIEVANCES. We hereby request that the charge and discipline be removed from the charged employee’s personal record, and be compensated for all lost time, straight and overtime.’ (Emphasis in original) (Employees’ Exhibit ‘A-2’).”

**FINDINGS:**

Upon consideration of the entire record and all of the evidence, the Board finds 1) the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; 2) PLB 6935 is duly constituted by Agreement and has jurisdiction over this dispute; and 3) the parties received notice of the hearing.

At the outset each party presents concerns that, if proven, foreclose consideration of the claim. The KCS labels the claim deficient because the BMW identified Claimant as Foreman when he is a Track Laborer. The BMW readily corrected this deficiency without further implication for on-property handling. The BMW's assertion that the KCS predetermined Claimant's culpability is not substantiated. Joining Claimant's and co-workers' claims for hearing did not impair Claimant's right to a fair and impartial hearing: Claimant chose his representative; Claimant was apprised of the charges on August 13, 2018; Claimant was afforded time to prepare for the hearing that convened on August 26, 2018, where his representative cross-examined Carrier witnesses and examined its evidence. The KCS did not breach Rule 13 - Discipline and Grievances wherein discovery is not authorized by the Agreement. The parties' concerns are set aside as the Board finds them unsubstantiated and, thus, no bar to consideration of the claim.

Claimant has established and holds seniority within the Carrier's Maintenance of Way Department. During the period leading up to the Claimant's discipline, he was assigned as Track Laborer to Gang 074. The Claimant has no record of discipline.

On August 9, 2018, at 0905 hours, Assistant Roadmaster Manes obtained track and time from the Dispatcher. Track Authority: "5037 to KCS MW 630 at GSU on Lake Charles Subdivision" with work between "GSU [including the switch] and North DeQuincy Wye on main." With Track Authority 5037 the Assistant Roadmaster was Employee in Charge ("EIC") with sole occupancy of the authorized track area.

On August 9, 2018, at 0908 hours, Foreman Ward - Gang 074 obtained track and time from the Dispatcher. Track Authority: "5038 to KCS MW 309 at Buhler on Lake Charles Subdivision" with work between "North DeQuincy Wye and GSU on main" and "Joint Authority with MW 630 between \_\_\_\_ and \_\_\_\_." Track Authority 5038 "Established Working Limits MP 732.7, MP 719.0." Foreman Ward (KCS MW 309) had joint track authority with EIC Manes (KCS MW 630). Foreman Ward called the EIC twice - - they did not connect - - and followed up with a text message to the EIC stating KCS MW 309 had joint track authority with KCS MW 630.

After Foreman Ward sent the text message to EIC Manes, he conducted a job briefing with Gang 074 and informed members of their joint authority; however, Foreman Ward had not obtained working limits within the joint authority from the EIC prior to the Gang entering track and starting work. At 0912 hours, Gang 074 entered joint authority track with MW 630 and started work near MP 727.6.

At 0935 hours on the 9<sup>th</sup> EIC Manes contacted Foreman Ward by phone. The Foreman confirmed for the EIC that Gang 074 already entered the joint authority track and was working. EIC Manes authorized working limits MP 727.0 to MP 728.0 for Gang 074. After Foreman Ward received these working limits he did not conduct a job briefing with the Gang to inform them of the limits.

On August 13, 2018, the Carrier notified Claimant of a formal investigative hearing to convene on August 23, 2018, for the following purpose:

. . . to ascertain the facts and determine [Claimant's] responsibility,  
if any, in connection with an incident that occurred on August 9,

2018 at approximately 9:30 a.m. While serving on Gang 074, it is alleged that [Claimant] failed to properly perform [his] duties in a safe and proper manner by entering Joint Authority Limits without first determining the working limits with your joint occupant. It is also alleged that [Claimant] entered the working limits without a proper job briefing. This incident occurred at or near Milepost B 727.6 on the Lake Charles Subdivision in North Buhler.

On September 6, 2018, the KCS' Vice President - Chief Engineer informed Claimant of the following:

After careful and thorough review of the transcript of this investigation, it has been determined that you have violated The Kansas City Southern Railway Company's General Order Code of Operating Rules 1.50 - Job briefing as amended by System Special Instructions; GCOR Rule 6.11.1 – Issuing or Voiding Mandatory Directives, Item C - Joint Authority amended by System Special Instructions; and The Kansas City Southern Railway Company's Maintenance of Way General Order Number 2 - Joint Track Authority.

The BMWF appealed the decision. It presented and advanced a claim through all stages of on-property handling including conference. The claim is properly before the Board for a final and binding decision. The Board renders these findings.

At the hearing the Presiding Officer admitted into evidence documents and testimony from the Roadmaster that Claimant violated (i) GCOR 1.6 - Conduct ("careless of the safety of themselves or others" and "negligent") and (ii) System Special Instructions' addendum to GCOR 1.6 on false statements:

Desertion from duty, making false reports or statements and concealing facts concerning matters under investigation are prohibited. Any violation of the law that is determined by the Carrier to make an employee unsuitable for railroad employment is grounds for dismissal.

The deciding official did not find and conclude that Claimant violated GCOR 1.6 and its addendum. In other words, the documents and testimony did not constitute substantial evidence that Claimant was "careless of the safety of themselves or others" or "negligent" or guilty of making a false statement.

The deciding official concluded that Claimant violated GCOR 1.50 - Job Briefing amended by System Special Instructions:

Perform job briefings at the beginning of the job, during the job as conditions change or new tasks are added, and at the

completion of the job to ascertain all requirements of the task have been completed.

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At a minimum a job briefing must: define the work to be done; how the work will be done; identify the potential hazards; and name the employees responsible for each task.

After the Foreman obtained Track Authority 5038 from the Dispatcher, he conducted a job briefing with Gang 074 and informed members that they had joint authority with MW 630, he had not connected with EIC Manes but would continue his efforts. The job briefing did not address working limits under the joint authority that were to be established by EIC Manes. The crew associated the joint authority work limits MP 732.9 to MP 712 as their working limits. The crew entered the track and started to work at MP 716.2. After the work started, Foreman Ward obtained working limits MP 727 to MP 728 from the EIC; the Foreman did not conduct a job briefing with Gang 074 to inform them of their EIC working limits. Claimant misunderstood the difference between joint authority working limits and working limits within the joint authority established by the EIC. Claimant did not question or examine the job briefing from where the lines for working limits within the joint authority were not filled in but left blank. Claimant violated GCOR 1.50 - Job Briefing.

The deciding official concluded that Claimant violated GCOR 6.11.1 - Issuing or Voiding Mandatory Directives at Item C - Joint Authority as amended by System Special Instructions. Item C - Joint Authority states:

When a joint authority is issued ... the employee receiving the authority must notify the ... employee(s) of the joint authority. The notification to the other ... employee(s) must be made before entering the joint limits of the authority ... employees must understand the conditions and movements that will be made within the joint limits and where established working limits, if any, exist.

Foreman Ward was “the employee receiving the authority” from the EIC. By the terms in Item C, Claimant was not responsible for notifying the crew. Item C states that “the employee receiving the authority” notifies the other employees. Undisputed is that Claimant was not “the employee receiving the authority.” Claimant did not violate GCOR 6.11.1 - Item C.

The deciding official concluded that Claimant violated The Kansas City Southern Railway Company’s Maintenance of Way General Order Number 2 - Joint Track Authority:

When track authority is Joint with other EIC’s, equipment or trains, after briefing with those in the work group, write the number identifying the other work group, equipment or engine on the “Joint Authority” Card with a “dry erase” marker and post it in a conspicuous location easily seen by all in the group.

Claimant's co-worker - - Employee Mosley - - informed the Roadmaster that Gang 074 had joint authority with MW 630 but there was no joint authority tag posted "in a conspicuous location easily seen by all in the group." This General Order serves as a reminder to employees and others of their joint authority as a safety measure. No one in Gang 074 posted the tag. Claimant's inaction is a violation of the General Order.

The decision letter states that Claimant would be required to complete "*remedial Roadway Worker Prevention training*[" [Emphasis supplied.] The remedial training will include The KCS Maintenance of Way and Signal Department On Track Safety/Roadway Worker Revision Guide, Rule 22.0 - Responsibilities of All Roadway Workers.

The training ordered by the deciding official is corrective and supportive of Claimant. The discipline assessed, however, is not corrective but excessive and punitive as the KCS did not prove all violations. The assessed thirty (30) day suspension - - five (5) day actual suspension and twenty-five (25) day overhead suspension - - is rescinded and Claimant is assessed a letter of reprimand. Claimant shall be compensated for any wage loss suffered during the five (5) day actual suspension. The Carrier has thirty (30) days to comply with this order.

AWARD: Claim sustained in accordance with the findings.

Patrick Halter /s/  
Patrick Halter  
Chair - Neutral Member

  
John Schlismann  
Employee Member

  
Louis Fernandez  
Carrier Member

Date: November 15, 2021