

## Special Board of Adjustment No. 1112

### **Parties to Dispute**

Brotherhood of Maintenance of Way  
Employees' Division/IBT

vs

Burlington Northern Santa Fe  
Railway Company

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**Case 95/Award 96**

### **Statement of Claim**

Appeal of discipline of a ten (10) day record suspension assessed Claimant Randy Forgey on July 5, 2005.

### **Background**

On April 25, 2005 the Claimant to this case, Randy Forgey was advised by the Division Engineer, Northwest Division to attend an investigation in order to determine facts and place responsibility, if any, in connection with his alleged violation of various operating rules. According to the notice of investigation the Claimant, holding classification as head welder and grinder, failed to follow instructions dealing with track repairs while working on the Carrier's Yakima Subdivision on or about April 13, 2005.

An investigation of these charges was held on June 8, 2005 at Ellensburg, Washington. On July 5, 2005 the Claimant was advised that he had been found guilty as charged, and he was assessed discipline as stated in the Statement of Claim.

The discipline was appealed by the Claimant in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the

Organization that created Special Board of Adjustment (SBA) 1112 under the authority of the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been granted final and binding powers to issue an Award on this case based on the criteria outlined by the parties in Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

**Discussion & Findings**

A road master by the name of Andrew Vulgas testified at the investigation. Mr. Vulgas is road master for the Yakima Valley and the Carrier's Stampede SubDivisions. His duties, according to his testimony, consist in confirming that track repairs and maintenance are done properly; to make sure that FRA standards are followed and so on.

In the second week of April, 2004 this road master was doing track inspections. At MP28 on the Yakima Subdivision the road master was with a Division Engineer by the name of Greg Jacobson. The latter did not testify at the investigation. According to the road master he noticed a part of the track that was not repaired properly. He saw bars and bolts laying next to the track where repairs had been started and not completed. He states that he also noticed that welds were not anchored, and the bolt holes were not reamed. Finally, he states that he observed that rail anchors, which keep the rail from moving longitudinally due to changes in temperature, were still reversed. The road master knew that the Claimant to this case had worked on the rail at the point in question, with a

fellow welder, who was also charged and whose case will be dealt with by the Board in Case No. 96, because it is required by the welding manual and engineering instruction for them to write their names on the rail after working on it, plus the dates that the maintenance or repairs had been done. Mr. Forgey's name was on one side of the rail. His welder companion's name was on the other side of the rail.

On the day in question these two employees had welded in a short piece of rail, called a plug, to replace a defect in the rail. After having done that, according to the road master, they also had to perform some other functions to complete the job. This is what they had not done. They had not replaced fasteners that had been removed, had not reamed the bolt holes properly, and had not taken care of rail anchors that were reversed.

On cross examination the road master is asked whether he had gotten a message or not from the Claimant explaining that the work they started at MP28 was not finished and that they would have to go back the next day to finish it. According to him he did not "recall" getting that message. The issue of overtime is raised at the investigation with the road master and he admits that it is his policy, and company policy no doubt, to try and keep overtime at a minimum. But he also states that if he had been asked by the Claimant and his fellow welder if they ought to have stayed at the location in order to have finished that he would have granted this request for overtime. According to the road master it would only have taken less than a half hour or so to have reamed the holes, reverse the anchors and so on.

Further, according to the road master the welding crew should have written on the

rail repaired what had been taken out. According to him they "...should have made some indication of what was adjusted...". This could be done in the computer system, or written on the rail at the point of repair. This had not been done.

According to the Claimant who held assignment as head welder on the BNSF since 1996 he knew that he and his fellow welder/grinder would not have been able to finish the job at MP28 on April 13, 2005 without incurring overtime. The location is quite isolated, track warrants had to be obtained, and so on which consumed a considerable part of the work day prior to their actual arrival on the scene. According to him he called the road master to get authorization to work overtime. He got permission but was told to keep it "...at a minimum...". As it turned out the two welders ended up holding up a train for about an hour while working overtime and would have held it up more if they would have stayed and completed the job. ~~As the Claimant states that he~~ made the decision to leave the site and return later to finish the work. He states that the road master never explicitly told him to stay to complete the job. So he just "...took it upon himself to vacate the area and come back at a later date and finish" the work. He states that he had no order from the road master to stay until the job was finished. The road master never told either he nor his fellow welder to stay on the job on this day until the bolt holes were reamed, and the anchors reversed. What he was told by the road master was to keep overtime at a minimum. So, he intimates, he did what he thought was best. The Claimant states that he did not believe that what they did was unsafe if they were going to come back the following day to finish the welding job. They did ream the

were not reversed but that was done on purpose for the road masters' inspections and that this created no safety hazard. None of this is disputed in the record of this case.

A review of the record shows that the Claimant states that they did not finish the job the first day because they were instructed to keep overtime at a minimum. The road master states that he could not recall any conversation with the Claimant and his fellow worker about this. On the face of it such is somewhat droll since the Claimant had to ask to work overtime, and he must have had some communication with the road master about overtime. Further, the road master stated at the investigation that is his policy to keep overtime at a minimum. So his philosophy about this matter, and what the Claimant states he was actually told, is consistent. Lastly, there is no hard evidence in this case that what the Claimant and his fellow worker did was unsafe. If they violated any procedure it involved not making hash marks after they finished their work. But this violation has to be weighed against what appears, in this case, a breakdown of communication between these experienced welders and the road master about what should have been done, and when it ought to have been done. In either case what they did was not unsafe which is always a primary concern of Boards such as this.

The Claimant and his fellow welder perhaps ought to have finished the job they started on the 13th. That would technically have been the ideal. But given the constraints on overtime conveyed to them by the road master and the fact that they were holding up train traffic the longer they stayed on the job it was not unreasonable for the Claimant to this case to have made the decision he did when he relegated certain details of the repairs