

PUBLIC LAW BOARD NO. 5395

Case No. 50
Award No. 50

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers and Trainmen

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

Claim of Virginia Division Engineer R. K. Harris for reinstatement with all benefits restored and pay for all time lost due to an investigation held on April 12, 2006, at Roanoke, Virginia, to determine Claimant's responsibility, if any, in connection with "... (1) operating train without a Track Warrant, thereby occupying main track without authority between Clover Junction, M.P. F31.0 and the Clover Plant at M.P. F47.4; (2) speeding at various points between Red Hill, M.P. V168.7 and the Clover Plant at M.P. F47.4; (3) improper train handling at various points between Red Hill, M.P. V168.7 and the Clover Plant at M.P. F47.4; (4) failure to communicate the change in method of operation from Sutphin, M.P. L59.7 onto Clover Spur at M.P. F31.0 and (5) failure to call signals and stations between Vabrook, M.P. L33.5 and the Clover Plant at M.P. F47.4; this while performing service as Engineer on Train 770V337, between 6:00 a.m., and 8:30 a.m., March 10, 2006."

OPINION OF BOARD:

This is a Track Warrant case. Claimant Engineer was assigned to Train 770, on March 10, 2006, when he operated in non-signalized territory between South Boston and Clover Plant, Virginia, without obtaining a Track Warrant in Traffic Control Territory. He was charged with failure to obtain a track warrant as well as a series of other charges all in some way connected to warrantless operation charge.

The Claimant had been called from the extra board to operated in the Hyco Pool and was deadheaded to a point identified as Altavista, Virginia, where he assumed control of his train and a Pusher was added. They then proceeded to South Boston, the beginning of Traffic Control Territory, where Track Warrants are needed to operate. When Crew 770 arrived at South Boston, the main line switch was opened by Local Crew V23, as a matter of courtesy, to enable Crew 770 to proceed

on to Clover Spur without the crew handling the switch or derail and without the required Track Warrant.

On this particular date, the situation pertaining to this dispute unfolded with a telephone call from Claimant to the Train Dispatcher, requesting a Track Warrant for Train 771. The train identification signaled to the Dispatcher that Train 770, was requesting Warrant authority to leave the Clover Plant. It then became clear, the Claimant's Train 770 had operated in to the Clover Plant from South Boston, in Traffic Controlled Territory, without a Track Warrant. From that point, it was just a matter of reviewing the event recorder tapes and other data, for Carrier officials to learn that Claimant's handling of Train 770 en route from South Boston to the Clover Plant, included speeding, failure to use the proper braking procedure and failure to communicate the names of intermediate stations.

As a result of these many disclosures, the charge referenced above, was filed against the Claimant and his Conductor to determine their responsibility for the issues raised by the charge. Upon the completion of an extensive trial involving testimony of numerous witnesses, the Carrier found Claimant guilty as charged and dismissed him from the service. The Organization appealed, contending among other things that Claimant and his Conductor were lulled into this misadventure by the Local Crew 23's assistance in opening the main track switch at South Boston into Traffic Controlled Territory with the tacit approval of the Train Dispatcher albeit without a Traffic Warrant. The Carrier disagreed, so the claim was appealed to this Board and Claimant notified by the Organization of our Hearing time and date.

The Organization advises that the factual situation giving rise to the present dispute was rendered moot by the Carrier's notices three days after the incident, making it abundantly clear that switches into Traffic Controlled Territory could not be manipulated by anyone until the Dispatcher had first issued the appropriate Track Warrant to that Crew. Therefore, they reason, these post facto changes establish Claimant's innocence, on the premise that Local V23's handling of the switches and derail with the tacit and "winking" approval of the Train Dispatcher made legitimate the Claimant's operation without a Track Warrant. That is a stretch!!

The communications with the Train Dispatcher and howsoever they were initiated, or who did the talking, is all beside the point. The rules in place, require the Crew to obtain a Track Warrant when operating in Traffic Controlled Territory. Crew 770 failed to obtain one and so they were operating to the Clover Plant in an unauthorized manner. Miscalculations of this nature could give the railroad personnel a sad story to relate. Fortunately, the empty train waiting to come out of the Plant had not received a Traffic Warrant.

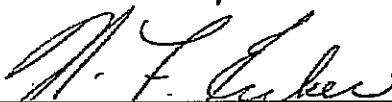
We believe the Crew's admission to the mistake establishes the truth of the first charge and the remaining charges are buttressed by the testimony of the witnesses interpreting the data from the Event Recorder Tapes.

We are aware the Claimant's past record is not a thing of beauty, as we reinstated him previously in our Award 33, in the early part of 2003, after he was out of service for four months. In this case he has been out nearly a year, so we feel he should be reinstated on a last chance basis, given the opportunity to work and finish out his railroad career on a positive note. This will require the cooperation of Claimant's peers and we expect he will receive it.

FINDINGS: Claimant is reinstated on a Last Chance Basis.

AWARD: The Claim is sustained to the extent set forth in the Opinion.

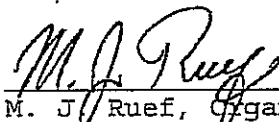
Dated in Norfolk, Virginia, this 30th day of April, 2007.



W. F. Euker, Neutral Member

 5/10/07

C. S. Decker, Carrier Member



M. J. Ruef, Organization Member

Carrier File: EE-RON-06-03
Organization File: EE-RON-06-03

