

PUBLIC LAW BOARD NO. 5939

Case No. 51
Award No. 51

PARTIES TO DISPUTE: **BROTHERHOOD OF LOCOMOTIVE
 ENGINEERS & TRAINMEN**

-and-

BNSF RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Engineer S. C. Lopez for reinstatement to service with pay for all time and benefits lost and removal of discipline (dismissal) from his personal record.

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1932;

That this Board has jurisdiction over the dispute involved herein.

The Claimant hired out in 1975. In 1979, he was promoted to a Locomotive Engineer.

The facts that led to this claim are certainly atypical. On July 30, 2004, Claimant was called as the Engineer on Train E-SUDATMO-83A, an empty coal train operating between Sioux City, Iowa and Lincoln, Nebraska on the Sioux City Subdivision. He and Conductor Poulsen went on duty at 6:00 a.m. The train departed Sioux City at 7:20 a.m. operating southward. Mile posts are descending between Sioux City and Lincoln, Nebraska.

The first 100 miles between Sioux City and Lincoln on the Sioux City Subdivision is dark territory not governed by signals. In dark territory, crews operate on the main line under track warrant authority issued by a Dispatcher.

The crew of Train E-SUDATMO-83A were given five track warrants on July 30, 2004. The first track warrant, 779, authorized them to operate from Sioux City and the south switch at Winnebago (MP 100). The second track warrant, 783, authorized the crew to operate from the south switch at Winnebago to the siding switch at Oakland, Nebraska (MP 60). Track warrant 783 voided track warrant 779. The third track warrant, 789, authorized the train to operate from the south switch at Oakland to Papa (MP 33.6).

Train E-SUDATMO-83A operated to MP 53, an intermediate point between Oakland (MP 60) and Papa (MP 33.6). At MP 53, the lead unit failed and the crew was unable to start it. The Claimant was instructed to go to the rear of the train where distributive power locomotive 9773 was and use that power to pull the train back into Oakland. He was directed to take locomotive 9773, run around the train, and place it on the head end as the lead unit. It took approximately six hours to accomplish this.

The crew was issued track warrant 804 which permitted them to "work between" MP 53 and MP 62 to return to Oakland. They were given an additional "work between" track warrant, 805, for the same territory an hour later. Track warrant 805 voided track warrant 804.

The "work between" track warrant cleared at 4:36 p.m. on July 30, 2004, and the crew resumed their trip to Lincoln. They were governed by track warrant 789 which had been given them at 9:06 a.m., over seven hours earlier. Track warrant 789 authorized the train to occupy the main line between Oakland (MP 60) and Papa (MP 33.6). However, at around 10:00 a.m., the crew had rolled up track warrant 789 to MP 53. Therefore, they did not have authority to occupy the main line beyond MP 53.

When Train E-SUDATMO-83A resumed its trip to Lincoln at around 4:36 p.m., they operated on the main line when the Dispatcher directed them to stop since they had no authority to proceed on the mainline beyond MP 53. They were removed from service.

At a meeting the following day, July 31, 2004, Carrier officers explained to the Claimant and Conductor Poulsen why they lacked the authority to proceed on the main line beyond MP 53. Conductor Poulsen thought they had overlapping train warrants. The Claimant believed that track warrant 789 was still in effect. He did not realize that it had been rolled up to MP 53 earlier in the morning on July 20, 2004.

The Claimant and Conductor Poulsen were notified to attend a formal investigation to ascertain the facts and determine their responsibility, if any, for occupying the main line without proper authority. The investigation was held on August 23 and September 7, 2004. On September 28, 2004, the Claimant was dismissed from service for occupying main track without authority.

There is no question that Train E-SUDATMO-83A occupied main track without authority. However, based on the unusual working conditions the crew experienced on

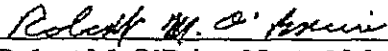
July 30, 2004, their misunderstanding is understandable. At 9:06 a.m., they had been issued track warrant 789 which authorized the train to occupy the main line between Oakland (MP 60) and Papa (MP 33.3). When the lead engine failed after the train went by Oakland, the crew received two "work between" track warrants in order to bring the train back to Oakland where the distributive power was moved from the rear of the train to the head end. It took approximately six hours to complete this runaround.


At around 4:36 p.m., the crew resumed their trip to Lincoln, Nebraska. They forgot that track warrant 789 had been given up at 10:00 a.m., over six hours earlier. They assumed they had authority to occupy main track to Papa. However, they had given up this authority six hours earlier. As observed above, track warrant 789 was one of five track warrants the crew received during the trip.

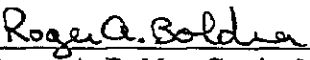
Occupying main track without authority is not an insignificant transgression. The Claimant was responsible for managing track warrants issued him to ensure that he was authorized to occupy main track in dark territory. Nevertheless, in view of the unusual circumstances the crew experienced during the trip on July 30, 2004, the Claimant's dismissal was unjustified, in this Board's opinion. Accordingly, the Claimant shall be reinstated to service with his seniority unimpaired but without compensation for lost earnings or benefits. He will be on one year of probation from the date he returned to service.

AWARD: Claim sustained to the extent indicated in the Findings.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


Stephen D. Speagle, Employee Member


Roger A. Boldra, Carrier Member

Dated: 11-6-06