

Case No. 1 Award No. 1

STATEMENT OF CLAIM:

FINDINGS: This is the first of two cases involving Engineers R. L. Hook ("Hook") and O. H. Wood ("Wood"). On January 28, 2001, Hook was the assigned Engineer and Wood was the Assistant Engineer on BN3115, a westbound train operating from Missoula, Montana destined for Spokane, Washington. Ahead of Train BN3115 was another westbound train BN4812. It had derailed a car causing a shut down of all traffic on the mainline.

The problem that caused this dispute to arise was that earlier the Dispatcher had issued a "joint until called" authority to Signal Maintainer D. Abromeit ("D. Abromeit") to occupy the same area in his hi-rail vehicle.

The crew of BN3115 were given "joint with Abromeit" authority by the Dispatcher. The Dispatcher did not give a first name. Subsequently, D. Abromeit backed his hi-rail vehicle east down the mainline until he saw BN3115 coming west toward him and bearing down on

his vehicle. A collision was avoided, however. This is the incident that caused this dispute to arise.

On January 30, 2001, Hook and Wood (the crew on BN3115) were directed to attend an investigation to determine their responsibility, if any, in connection with an allegation that their train occupied a main track without authority on January 20, 2001 at approximately 1545 hours.

Subsequent to an investigation held on February 15, 2001, the Claimant was found to have violated Carrier's Operating Rule 6.3. He was suspended for thirty (30) days.

On April 26, 2001, the Organization appealed the Carrier's decision on procedural and substantive grounds. With respect to the procedural objections by the Organization, it contends that the proceedings were not fair and impartial because the Carrier did not call the Missoula West Dispatcher to testify and that the Conducting Officer showed bias and prejudgment at the investigation because he denied the Organization's requests for recesses and, in denying these requests, the Conducting Officer was "confrontational."

With respect to the merits, the Organization pointed out that the Dispatcher had granted authority to enter the track. The crew was aware that it was under a joint track and time authority with "Abromeit." The Organization argues, if fault can be found, it should be levied at the Dispatcher for his failure to properly identify which "Abromeit" was the joint authority holder.

The incident at issue here was reviewed by the FRA Locomotive Engineer Review Board. In its decision, dated January 4, 2000, that Board, in relative part, found as follows:

The material facts in this case are not in dispute. the petitioner stopped his train east of East Noxon, Montana, where he received from a train dispatcher a joint track and time authority to occupy a main track segment. Specifically, the dispatcher issued the track and time authority for the train to occupy the track segment with a person identified as "Abromeit." The petitioner contacted assistant roadmaster Alan Abromeit, who was the responsible railroad official at the site, and received his permission to enter the track segment.

The engineer, however, did not know that the train shared the track and time authority with signal maintainer Dick Abromeit, who was operating a hi-rail vehicle over the same track segment, and that he was supposed to contact Dick Abromeit, and not Alan Abromeit, before proceeding. MRL determined that the petitioner violated operating rule 6.3 (Main Track Authority) for not receiving Dick Abromeit's permission before entering the main track limits, which constituted operational misconduct under the Federal regulations for occupying a main track segment without proper authority.

After perusing the transcript, the Board believes that the unique facts in the instant case warrant the interposition of equity. As a preliminary matter, the Board agrees that the facts show a regulatory violation on their face. The railroad correctly asserts that the petitioner occupied a main track segment without proper authority by not contacting the person identified on the track and time authority, in violation of operating rule 6.3. Generally, the Board defers to a railroad's interpretations of its operating rules and practices in determining whether a train occupied a main track segment without proper authority, See 56 Fed. Reg. 28228, 28250 (1991).

Nevertheless, the Board reasons that strictly applying the law to the facts would "produce an unjust result not intended by FRA's rules," 58 Fed. Reg. at 19001. FRA intended that revocation actions be taken when an engineer's conduct causes operational noncompliance, See Id at 18996. Such operational misconduct is found when a cardinal safety rule violation "is the direct and immediate responsibility of the locomotive engineer," 54 Fed. Reg. 50890, 50913 (1989). (Emphasis added) In other words, decertification is appropriate when the engineer is responsible for a poor safety performance incident, See Fed. Reg. at 18996; see also 54 Fed. Reg. at 50913.

Applied here, the pivotal issue is whether the petitioner should be decertified when the dispatcher failed to identify the full name of the official sharing the track and time authority with the petitioner. Although the railroad maintains that mitigation is insubstantial because the engineer should have verified the correct identity of the employee, the Board disagrees. The engineer complied with the dispatcher's radio instruction verbatim by contacting Mr. Abromeit and receiving his permission before entering the overlapping limits of the main track segment. The railroad failed to inform the petitioner of the specific person he was

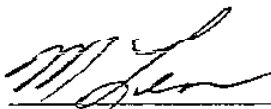
required to contact. This notice could have been satisfied by either delivering the electronic print-out of the track and time authority to the petitioner or conveying the full name of the official by radio communication. Under the present facts, the petitioner's execution of the radio instruction warrants equitable relief.

In summary, the record shows that the petitioner was not directly and immediately responsible for the operational misconduct at issue. He complied with the track and time authority as communicated by the dispatcher and he was otherwise qualified in his knowledge, skill, and ability when operating the train Cf. 58 Fed. Reg. at 18986 (Section 240.117 "is directed toward preventing persons who are unqualified by virtue of their failure to employ their knowledge, skill, or ability when operating locomotives"). Accordingly, the Board concludes that decertification is unwarranted in this instance.

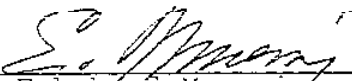
The Board, after careful review of the entire record, does not have a proper basis to challenge the well-reasoned analysis of the FRA Locomotive Review Board. Accordingly, the claim is sustained.

AWARD

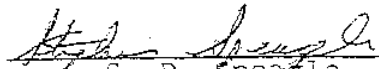
The claim is sustained.



M. R. Lemm
Carrier Member



Eckehard Muessig
Neutral Member



S. D. Speagle
Employee Member

Dated: 10/10/02