

PUBLIC LAW BOARD NO. 3836

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

-and-

SOUTHERN PACIFIC TRANSPORTATION
COMPANY (WESTERN LINE)

- CASE NO. 5:
1. B & B Foreman J.R. Harrison from discipline by suspension for sixty (60) days.
 2. BB & U Carpenter B.A. McAdam from discipline by suspension for thirty (30) days.
 3. BB & U Carpenter M.J. Ivanusich from discipline by suspension for thirty (30) days.

BACKGROUND:

On October 23, 1985 a flat car ran away at, or about, M.P. 186.6 near Norden, California while B & B employees were attempting to off-load a trailer. The run away passed through an open derail, picked switches entered upon the main line on 1.8 percent down grade traveled several miles, threw the lading on a curve, traveled several more miles and derailed down an embankment. There were no personal injuries.

As a result of the aforesaid incident the Appellants, listed above, were disciplined for having violated certain of the Carrier's Rules and Regulations.

Assistant Division Engineer J.J. Deis conducted a "Hearing" on November 5, 1985 in connection with "alleged violation of part of Rules 'M-801", 'M-818' and '104-A' which resulted in a runaway flat car at or about MP 186.6 near Norden, California on October 23, 1985."

Each of the Appellants testified on their own behalf; a summary of that testimony is set forth below.

B & B Carpenter M.J. Ivanusich testified:

He was employed by SOPTC for approximately six (6) years, was generally familiar with the applicable Rules & Regulations.

That; on October 23, 1985 he was riding in a "High Rail Vehicle" from "Tunnel 6 to Shed 38" which passed through a derail that had been placed in other than the derailing position by "Welder - Schwartz."

That; "Schwartz unlocked it (35 Switch from the siding to the main) and, then, I had to get out and unlock the box and switch it off the siding to the main and he [Schwartz] went back by the trailer and I believed that he threw it [the derail] back on the way back."

That; he did not look back to see if the derail was closed, "No, I honestly believed it was closed and I didn't double check it."

That; the "High Rail Vehicle" passed through the "open" derail and that he did not stop to return it to the derailing position.

B & B Carpenter B.A. McAdam testified:

He was employed by SOPTC for twelve and one-half years, two years as a Carpenter. He is generally familiar with the applicable Rules & Regulations; he knew he was not going out on the track without having all required derails in a derailing position.

That; he did not make any effort to return the derail back to a

derailing position -- "No, I didn't." (TR 35)

Semi-Truck Driver J.L. Valliere testified:

He has been employed by SOPTC for approximately seventeen years, ten (10) as a Truck Driver, and is generally familiar with the applicable SOPTC Rules & Regulations.

On October 23, 1985 while in the process of removing a partially loaded cement trailer from a flat car at Norden, California, he backed up a portable ramp (guided by B & B Foreman Harrison), and discovered that the trailer was "in cockeyed", i.e. "not straight in parallel with the deck," thus, he could not couple up to the trailer.

That; while maneuvering his tractor on the flat bed, attempting to make the hitch, the flat car began moving ahead, to the west. Valliere jumped off the moving flat car containing the trailer and his tractor.

That; neither he or Harrison checked to see whether the flat car was secure or that the hand brake on the flat car was set before attempting to drive his tractor up onto the flat car.

Neither did Valliere observe whether the derail was in place when the evident flat car ran away.

B & B Foreman J.R. Harrison, Jr. testified:

He has been employed by SOPTC for approximately twenty (20) years, eight as a B & B Foreman; he is generally familiar with the applicable Rules & Regulations.

Harrison acknowledged that; he had been properly instructed concerning the importance of derails and the protection of equipment in mountain grade territory "several times and, that; those under his jurisdiction were similarly instructed. "They [Ivanusich and McAdam] heard the same thing."

Harrison opined that; Ivanusich and McAdam were responsible to see that the derail was lined for derailment; "Yes, Sir. All the men that was at them switches knew better and they all know to check and see that the stuff is relined." (TR 39)

Harrison did not check to see that the switch was properly lined after the vehicles left the siding and, further; he could not see the derail from where he was directing Valliere's movements up the ramp.

Harrison did not make any attempt to retrieve the runaway flat car, nor, did he make any attempt to determine whether the flat car was properly secured before attempting to off-load the trailer.

Harrison acknowledged that under the circumstances it would have been possible for the flat car to have moved while the tractor was between the end of the ramp and the end of the flat car creating the potential for serious personal injury. (TR 39)

Harrison also acknowledged that; obviously the derail remained open following the departure of the "High Rail Vehicle" at about 7:00 A.M., thus, the derail was open when the tractor arrived at about noon.

Harrison stressed that on the morning of October 23, 1985 he was "running two gangs," that he had been assigned to obtain certain in-

formation for his Supervisor which necessitated him being on the phone "as soon as possible around 7:00 A.M." It was then he was notified that the tractor was coming around noon to remove the trailer from the flat car. "...So I stayed at Norden and worked with the men there arriving back at the Tunnel 6 at about 15 minutes to 12." (TR 42)

Asked if he still had time to "look around to see if everything was proper and normal," Harrison replied he "could have." "I could have drove down." "It is not visible or noticeable from my office, and that is where I went to wait for him [the tractor]." (TR 42)

A summary of the testimony of the SOPTC Supervisory employees called as witnesses is summarized below:

L.E. King, Regional BB & U Manager - Did not witness or take part in the incident which occurred October 23, 1985.

He subsequently determined that; Harrison and Valliere were attempting to off load a trailer from a flat car on the spur at Tunnel 6. That; McAdam and Ivanusich were operating a rail-mounted highway truck from the spur at Tunnel 6 to the main line and then to another work location.

That; the flat car ran away proceeding through the open derail, split the switches and continued down the hill on the main. That; a runaway flat car on a 1.8 percent downgrade creates an "extremely hazardous and dangerous condition." That; the flat car derailed "approximately 7.4 miles from where it originally started. That; no

injuries resulted from the runaway. That; he reviewed Rule 104-A with Harrison and discussed its importance, "...I know I talked to him at least one time." (TR 14)

That; he had distributed "Certain of MW Rules" (See Employer's Exhibit A attached to the Transcript), and discussed them with the employees.

R.A. Carter, B & B Supervisor - Employed by SOPTC for approximately fourteen (14) years, he is the Supervisor of the Appellants, he did not witness what occurred on October 23, 1985.

Carter investigated the runaway and the open derail, and, determined that the derail was not returned to its normal position following the passage of the "High Rail Vehicle" thus, permitting the passage of the runaway flat car through the area to the main and down the hill to the point where it eventually derailed.

Carter testified that he had instructed Harrison and the "men of the gang" about "our derail switches." "We have portable derails that were on the downhill side of our work." "They were to be placed whenever the equipment was used on the track." "It was repeated over and over, stressed that point." "We didn't want anything to get away." "In other words, it was a constant on-going thing, continually...it was an on-going thing through the whole job."

Carter stated that it is normally the responsibility of the person who opens the derail (the one who goes through it) to see that it is returned to the normal position (the derailing position).

Carter could not say with certainty whether the Welder threw the

derail or simply unlocked it and one of the employees on the truck threw it, but he was certain it was the responsibility of the truck crew to return it to the derailing position.

Carter testified that the train crew placed the flat car on the spur, but did not know if they secured it. Carter said he saw the car on the spur October 22, 1985, but; did not inspect the car to determine whether it had been secured. (TR 22)

Carter asked, "When a member of the gang opens the derail switch whose responsibility is it to reline it," replied "It is the responsibility of everybody up there to make sure it is lined back." (TR 22)

Carter, when asked by Assistant Chairman Shelly, BMWE, whether, if it was the responsibility of one individual to make sure they are locked, wouldn't it be a safer place to work, Carter replied, "Yes, it would." (TR 23)

Carter stated he believed a propane cylinder had been removed from the flat car on October 22, 1985. (TR 23) When Carter saw the car on October 22, 1985 he observed that the derail was lined and locked for derailment.

OPINION AND FINDINGS:

The Board must first determine if the provisions of Rule 45 were complied with by SOPTC. They were.

- a) BMWE raised no objections to the manner in which the "Hearing" was conducted.

b) Our analysis of the entire record shows that Mr. Deis did accord these Appellants a "Fair and Impartial Hearing."

The Board turns now to the question of whether SOPTC adduced "Substantial Evidence" to prove the guilt of the Appellants.

Clearly these Appellants, and BMW (Shelly TR 43), tacitly acknowledge they failed to abide by certain important Safety Rules & Instructions.

The conduct of these Appellants on the morning of October 23, 1985 constituted a serious breach of their duties and responsibilities as employees of SOPTC.

The events of that day had the potential for catastrophic results not only for these individuals but others as well. Further, these Appellants are not tyros, they are mature, experienced Railroad employees with previously clear Disciplinary Records.

Many Arbitrators regard Discipline as a teaching process, designed to instruct employees in the necessity of abiding by the reasonable rules of conduct designed to regulate life in the work place. It is only when employees demonstrate by their conduct an unwillingness to conduct themselves appropriately, or display an inability to adapt to the norms of the work place, that Discipline converts into a punitive process, designed then to protect the welfare of the many against the transgressions of the few.

There is nothing in this record indicating that these Appellants are Disciplinary Problems; quite the contrary. However, this one aberration was of major significance and should be utilized as a

teaching experience for future guidance.

Finally, a clear Disciplinary Record is analogous to a line of credit one can call upon when needed.

Considered in this light, and; in view of the particular circumstances involved in this situation, the Discipline imposed was "Excessive," within the meaning and intent of the parties' Agreement. Accordingly, this Board will adjust the Discipline imposed in the manner, and to the extent, set forth in the Board's Award.

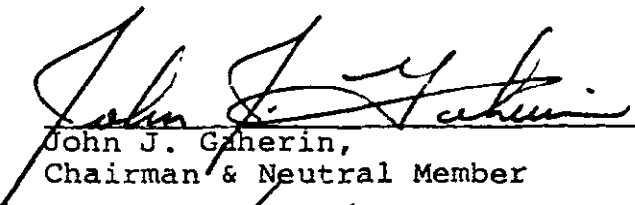
AWARD:

The Discipline imposed upon J.R. Harrison, SSA #568-58-6972, shall, and hereby is, reduced from a suspension of 60 days to a suspension of 15 working days without pay.

The Discipline imposed upon B.A. McAdam, SSA #551-90-6126, shall, and hereby is, reduced from a suspension of 30 days to a suspension of 8 working days without pay.

The Discipline imposed upon M.J. Ivanusich, SSA #565-88-2570, shall, and hereby is, reduced from a suspension of 30 days to a suspension of 8 working days without pay.

IT IS SO ORDERED:


John J. Gaherin,
Chairman & Neutral Member

4/30/86

