

Award No. 23
Case No. 23
Carrier File: 9500856
Org. File: D9500856

PUBLIC LAW BOARD NO. 5681

Parties: Brotherhood of Railroad Engineers
and
Union Pacific Railroad Company

Statement of Claim:

Request of Carrier to expunge from record of Engineer L.A. Davis the Level 3 Discipline assessed her under Upgrade Discipline Policy and restoration of all pay for all time lost for allegedly running through the east yard lead switch while making a reverse movement at Gering.

Background:

The Claimant Engineer with a seniority date of 1989 was disciplined by a Level 3 sanction for allegedly running through the east yard switch at Gering while backing up in response to a radio communication from Brakeman Obermiller.

The incident was on December 12, 1994 and the Investigation was held on January 9, 1995 and on January 18, 1995 the Carrier held that the Claimant was guilty as charged.

The Claimant was the Engineer of Train LCC55-12 and had been working coal runs on the branch for a year and a half. Mr. Goddell was the pilot conductor that day. He had almost a year's seniority with the Carrier and this was his first day on the instant job. Brakeman Obermiller had eight months of service and had worked in the territory almost a month and a half. Conductor Doren, the

regular conductor was not present at the Investigation as he was accompanying Mr. Rairigh, MTO, at the time of the incident.

The job assignment of the Claimant and crew was working in Gering Yard. Just prior to the incident, they moved westward off the main and pulled a train into Track 4. They were then instructed to cut off their power and go up the lead to the 1 switch and make an eastward move back into Track 1. At this time Pilot Conductor Goodell was in the head end with the Claimant and Brakeman Obermiller was in the trailing unit to operate the switches.

The work of the crew was to enable a work train on duty at an extension of Track 4, to tie onto the train that the Claimant crew and brought into Track 4 and pull it in the clear.

The Claimant crew was to set up Unit UP2013 onto the east end of Track 3 and take the other two units around the wye, bring them back in and tie them onto an outbound train.

MTO Wilder, who was on duty in the Yard, testified he observed Brakeman Obermiller operating the switches correctly. Mr. Wilder further testified he heard the Brakeman on the radio tell the Claimant Engineer he had to, and he did, line the switch into Track 1. He then told the Claimant to back up. The Claimant replied she was backing up and Mr. Wilder added in a few seconds he heard stop, stop, stop, and heard the Claimant state that she was stopping. After a ten or fifteen second pause, he heard Mr. Obermiller state, bring them back east about five feet (Tr 23). Mr. Wilder stated he

felt something was wrong, so he drove to the east end of the Yard and observed that the Claimant and the Pilot Conductor Goodell were inspecting the run through switch.

Mr. Wilder testified that at the time he heard no communication between the Brakeman protecting the shove and the Pilot Conductor and the Claimant. Nor did he hear any car counts given or asked for when instructions were given to back up (Tr 24).

Mr. Wilder stated all he heard was Brakeman Obermiller say was back them up and the Claimant reply, backing them up, and that was all he heard on the radio until he heard the words, stop, stop, stop.

The Claimant testified the move from the west end to the east end of the Yard was done by radio communication rather than hand signals, plus the fact she had him in sight until they stopped (Tr 64).

The Claimant stated when the move was made to the east, by radio communication, Mr. Obermiller told her to back up and she responded by backing up. To the best of her recollection, the Engineer stated the Brakeman told her the distance would be about three cars. She further stated that when she had gone approximately a car and a half or two cars, she started applying her brakes even though she had received no instruction from the Brakeman, and when he told her to stop she made a full application of her independent brake. In response to a question she insisted the Brakeman told her to back up three car lengths (Tr 64-65).

The Claimant reiterated that Mr. Obermiller had given her a length of approximately of three cars and at approximately a car and a half to a two car lengths she started to apply her brake. She added she received no further radio transmission from Mr. Obermiller and he was not then visible to her. By the time he told her to stop, she believed she had gone some three cars but she started applying her brakes prior to that time (Tr 65).

The Claimant stated at the job briefing prior to this move it was understood that all moves would be made by radio communication. There were to be no hand signals unless she was told that they were changing from radio to hand signals, and she said that was acceptable to her (Tr 66).

The Claimant states she stopped when she did, in order to comply with the rule that mandated a stop must be made within one half of the distance specified, unless additional instructions are received (Tr 67). She added that although she did not receive additional instructions, she started stopping the train (Tr 67).

The Claimant stated the Brakeman was not in sight when he gave her the signal to back up (Tr 68).

The Claimant stated this was the first time she worked this assignment, i.e., the top end local and was only vaguely familiar where all the switches were located (Tr 69). The Claimant also set forth a host of reasons why she should not have to work this assignment (Tr 70).

The Claimant responded to a question that it was Carrier policy for a Conductor and Brakeman to work together when moves of this kind were being made, and there was no reason that this policy should not have been followed since there was a four man crew on the job (Tr 71). She added that in this case Conductor Goodell was in the head end unit and Brakeman Obermiller was on the trailing unit or three units away.

Pilot Conductor Goodell testified that he did not hear any distance specified by Obermiller when the back up move was made. He stated he believed all the rules were complied with but he was not listening carefully because he was occupied with his paper work and computer duties (Tr 75). He also replied to a question that in his training he had never been instructed that in his moves either as a conductor, a switch foreman or a switchman he was to be with the Helper at all times (Tr 76). He also testified that he never had any doubts that Mr. Obermiller could make the move properly in accordance with all the rules without any assistance (Tr 77).

Mr. Goodell also testified that he had taken no exception to the way the Claimant had operated her locomotive that day (Tr 81).

Brakeman Obermiller testified he was protecting the point when a set of light units moved east on Track 101 but he stopped the move about six car lengths because another train was on the east yard lead. Mr. Obermiller testified that he may have used the radio when the first eastward move was made but when the locomotive

came within six car lengths from the east end of No. 1 switch, he stopped it with hand signals (Tr 83).

Mr. Obermiller stated he started off the east movement by telling the Claimant to bring the unit back three or four car lengths. He stated he was certain that he told the Claimant "three or four" car lengths and not three car lengths. He also stated that when the locomotive stopped it had gone six car lengths and through the switch (Tr 83-84).

The Brakeman testified that after he had told the Claimant to back up three or four lengths he gave her hand signals and an "easy." He then gave her a frantic stop with the lantern, but he had no feel of stopping. He added he said, stop, stop, stop, and then there was the slow application of brake but no use of the emergency. When the train came to a full stop, he got off on the engineer's side when he was standing on the lower step (Tr 84).

In response to a question from the Hearing Officer, Mr. Obermiller stated that he started the eastward movement after the lead was cleared, with a radio communication to bring back the units three or four car lengths. He further stated that he then changed to hand signals without further telling anyone he was making the change (Tr 85). The Brakeman stated he had about 25 days experience in train service outside the yard. The Brakeman objected to the meaning of Rule 5.3.6 which the Hearing Officer ascribed to it. He insisted that since there had been no prior

discussions of radio or hand signals the Claimant should have responded to whatever signals he gave her.

Carrier's Position

The Carrier asserts the discipline is warranted by the evidence of record. There can be no doubt that the Claimant while backing up ran through the switch at the east yard lead, despite the signals given her, both hand and radio, by Brakeman Obermiller stationed at the lead switch to guide her. The Brakeman testified that the Claimant did not respond to the signals he gave her, especially his urgent, frantic and repeated pleas to stop.

The Carrier maintains that the Claimant with her five years of experience as an engineer should have been able to respond to the signals of the relatively inexperienced brakeman.

The Carrier stated there is no probative evidence in the record to show there was any communication between the Claimant and the Brakeman to ensure with some exactitude the distance the Claimant was to travel backwards.

The Carrier stated that the Claimant erred in failing to insist that the Brakeman give her an exact count of the distance or car lengths to be traversed before reaching the switch in question. The Carrier asserts that the Claimant as the most experienced and senior member of the crew, should have managed the movement without this mishap.

The Carrier denies that MOP Wilder told the Claimant that she would not be subject to discipline. All that he said after the drug test had been administered, was that on the basis of the present facts it did not appear she was at fault, but fault or blame had to wait until the Investigation was completed.

The Carrier stated that the Claimant ran through the switch because she did not effect with Brakeman Obermiller the exact car lengths she was to move and just backed up without any precise knowledge of the movement she was to make. Nor did she comply with the Brakeman's warning for her to stop, or in any way be prepared to stop as she approached the switch in question. The Carrier stated the incident occurred because the Claimant failed to effectively communicate with the Brakeman and therefore caused the switch run-through, and consequently, the discipline should be upheld.

Organization's Position

The Organization maintains that the Claimant operated her locomotive in a safe and efficient way and the incident occurred because a new and experienced Brakeman changed from radio to hand signals without notifying the Claimant as required by the rules. The testimony revealed that Brakeman Obermiller was an inexperienced employee and was not aware, for example, that there was a hand signal for individual car lengths. Mr. Obermiller also

revealed his lack of knowledge of the Radio Transmission Rules in his colloquy with the Hearing Officer (Tr 85-86).

The Organization asserts that there was scarcity of communication between the Claimant and the Brakeman. In fact the record shows that there was no real proof that there had been an adequate work briefing among the crew as how they should execute their discrete tasks.

The Organization maintains that the record does not contain sufficient probative evidence to hold the Claimant culpable because she operated in accordance with all the applicable rules.

Findings:

The Board, upon all the evidence and the entire record, finds that the employee and Carrier are Employee and Carrier within the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given notice of the hearing thereon.

The Board finds the evidence of record does not sustain a finding of guilt of the part of the Claimant. The record shows that she was a victim of the inexperience and lack of knowledge of having to operate with young and inexperienced train employees. There is no doubt that if Brakeman Obermiller had discussed with, or put the Claimant on notice about, the possibility of changing communications from radio to hand signals, especially at night, the entire incident could have been avoided. It appears equally

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certain that if the Carrier had ensured an adequate and appropriate work briefing period, the incident might not have occurred.

The Board finds no probative evidence that the Claimant operated in disregard of the rules or in a reckless or negligent manner.

The Board finds that the entire crew with the exception of the Claimant was young and inexperienced and the Carrier should have invoked appropriate measures to correct this gap.

In light of the Findings, the Board does not find it necessary to reach the procedural objection interposed by both the Organization and the Claimant.

Award: Claim sustained.

Order: The Carrier is directed to comply with the Award, on or before July 8, 1996.

Jacob Seidenberg
Jacob Seidenberg, Chairman
and Neutral Member

June 6, 1994