

PUBLIC LAW BOARD NO. 5997

PARTIES TO DISPUTE:

| | | |
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| BROTHERHOOD OF LOCOMOTIVE ENGINEERS) |) | |
| (EASTERN DISTRICT) |) | |
| |) | NMB CASE NO. 6 |
| VS |) | AWARD NO. 6 |
| |) | |
| UNION PACIFIC RAILROAD COMPANY |) | |

STATEMENT OF CLAIM:

Claim of Engineer P. W. Tidwell of Cheyenne, Wyoming for reinstatement with all seniority rights unimpaired, pay for all lost time and all entries of this discipline (UPGRADE Level 5) to be removed from his personal record.

FINDINGS AND OPINION

The Carrier and the Employees involved in this dispute are, respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended. This Board has jurisdiction of the dispute here involved.

The parties to this dispute were given due notice of hearing thereon.

Claimant in this case was instructed to report for formal investigation on the following charge:

"to develop facts and determine your responsibility, if any, in connection with the charge that while working as Engineer on train BCYCY-10, at about 5:12 a.m., October 11, 1996, you were allegedly careless of the safety of others when you reportedly failed to properly secure your train on Track P-1 in Cheyenne Terminal, resulting in your train rolling unattended in an eastward direction where a collision occurred with train G2SED-09 near Mile Post 504, with resultant personal injuries to crew of train G2SED-09, derailment of your train and train SEMEZ-09, and, further, that you failed to report this unattended movement by the first available means of communication. This indicates a possible violation of the General Code of Operating Rules, Third Edition, effective April 10, 1994."

The investigation was held over a four-day period, and following the investigation claimant was notified of Carrier's decision that the charges against him had been sustained and he was

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assessed Level 5 discipline (dismissal from service) under the terms of the UPGRADE Discipline Policy.

The Organization has argued before this Board that claimant was denied a fair and impartial hearing as required by the governing rule. It is alleged that claimant was denied representation at the local interview following the incident here involved. The record before us, however, indicates there was a BLE representative present during the interview, therefore, this allegation is without merit.

The Organization states that Carrier's charging officer was openly hostile to claimant during the hearing and tried to slant his testimony and evidence to ensure a judgment against claimant. In our review of the transcript the Board does not find sufficient evidence to justify a finding of support for such allegation.

In addition, the Organization objects to the manner in which the Train Dispatcher's testimony was given. It is alleged the testimony of the Dispatcher was somehow compromised because of "coaching" presumably overheard on the other end of the telephone conversation. However, when asked if he was alone during the conversation, the Dispatcher clearly stated he was and there is no evidence to contradict this statement. Consequently, the Organization's objection here must likewise be overruled.

Finally, the Organization objected to the "format used in the Carrier's notice of hearing," alleging claimant could not have proper representation or preparation without knowing the specific charges against him. It is the opinion of this Board that the charges against claimant were clearly set forth in the notice of hearing and we find no merit to this presumed procedural objection.

When we look at the merits of this dispute we find the record is clear that claimant moved his train, an empty ballast train with Unit 3201, to the main line and left it there unattended while he went back to his loaded ballast train to yard it in the Woolhouse track. In making this move claimant failed to apply any hand brakes on the empty ballast train or engine unit UP 3201. The unattended train rolled free and ultimately collided head on with a westbound train. The collision resulted in a derailment of five of the empty ballast cars which fouled an adjacent track and resulted in the derailment to train SEMEZ-09. The conductor and the engineer of the Unit involved in the head-on collision suffered personal injuries and Carrier estimates the damages amounted to \$299,000.00 which does not include the personal injuries.

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The evidence before us is more than sufficient to justify Carrier's finding that claimant was in violation of various rules as set forth in the General Code of Operating Rules which clearly provide that unattended trains must be properly secured by applying a sufficient number of hand brakes.

Claimant's failure to comply with the rules governing unattended trains, led to this train rolling away, and when claimant ultimately noticed his train was not where he left it, he merely notified the Dispatcher it was his train which had passed CP 506, without indicating this was an emergency situation involving a runaway train. The record before us is explicitly clear that claimant was at fault in this instance.

The Organization has urged that we find the Level 5 discipline (dismissal from service) as too harsh and excessive for the infraction here involved, particularly in view of claimant's long years of service as an Engineer.

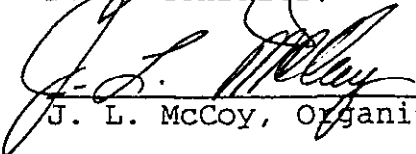
While the Board can certainly sympathize with the Organization's effort to secure the employment of claimant, we must recognize the extremely serious results of this negligent and/or careless act in failing to properly secure the unattended train. What occurred is a prime example of just what the rules were intended to prevent; i.e., serious damage to property and jeopardy to the well being of other employees. It must be our decision, therefore, that the discipline imposed was not improper and we so hold.

AWARD

Claim denied.


F. T. Lynch, Neutral Chairman


D. J. Gonzales, Carrier Member


J. L. McCoy, Organization Member

Award date Sept 30, 1997