

PUBLIC LAW BOARD NO. 6299

Case No. 7

Award No. 7

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-and-

MONTANA RAIL LINK, INC.

STATEMENT OF CLAIM:

Appeal for removal of discipline (revocation of Switch Foreman's rights) from Switchman T. P. Hopkins' personal record and that he be made whole for all lost wages and benefits.

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, 1934;

That this Board has jurisdiction over the dispute involved herein.

The Claimant, Switchman T. P. Hopkins, had worked for Montana Rail Link, Inc. (hereinafter referred to as MRL or the Carrier) for ten years when the incident that led to this dispute occurred. He worked as a Switchman for two years and a Switch Foreman for eight years. On July 19 - 20, 1999, Claimant was the Switch Foreman on the Laurel-Billings, Montana transfer assignment. J. M. Dorsey was the Engineer on this assignment and R. J. Pisen was the Switchman. The Claimant had been on this assignment for two weeks. Engineer Dorsey and Switchman Pisen had worked this transfer job together for about one and one-half years.

The Laurel-Billings transfer assignment went on duty at 10:30 p.m. on July 19, 1999, in Laurel Yard. At approximately 1:45 a.m. on July 20, 1999, the crew was in Billings Yard making up their outbound train for their return trip to Laurel. The crew came into Billings from the west and proceeded by track 1001 (old yard one) when

Engineer Dorsey observed that three cars to be placed on the rear of their outbound train were in the middle of cars they were going to pick up on Track 1001.

Engineer Dorsey advised Switchman Pisenio on the radio that these three cars would have to be switched out and placed on the rear of their outbound train. The Claimant heard this communication on the radio. He was yarding the inbound train at the time.

Switchman Pisenio walked Track 1001 from west to east and made a cut five cars in at the first rear-end only car. He did not set hand brakes on any of the cars left standing on the track. He noticed a piston up on one of the cars and assumed from this that the air brakes had been set. He walked east coupling air hoses on the remaining cars.

Engineer Dorsey pulled the cars out of track 1001 and began to shove them down the lead in a westerly direction. The Claimant was at the lead waiting to cut the three rear-end only cars so that the other 12 cars could be shoved back into Track 1001. There is a .4 track gradient running down east to west in Billings Yard. Cars not properly secured tend to roll east in Billings Yard.

As Engineer Dorsey was shoving 15 cars westward down the lead, the cars that had been left on track 1001 began to move eastward toward the lead. When the Claimant observed the cars moving toward the lead, he radioed Engineer Dorsey telling him to pull east as fast as he could. As Engineer Dorsey began to move eastward, the five cars rolled out of Track 1001 and collided with the cars he was pulling.

Eight cars derailed as a result of this collision. Three of these cars contained liquid petroleum gas, a hazardous material. Several of the empty cars that derailed contained residue of liquid petroleum gas, ammonia or toluene all of which are hazardous material. Engineer Dorsey injured his back in this collision but did not require medical attention.

Because of this collision, the Carrier's emergency response was activated. Several roads were closed and part of Billings was evacuated for about six hours while the derailment was cleaned up. The media reported this derailment and MRL was criticized in some of the media coverage.

On July 21, 1999, the crew of the Laurel-Billings transfer assignment were notified to attend a fact finding to determine their responsibility, if any, for their alleged failure to secure cars left standing on old yard one in Billings Yard resulting in a personal injury to a crew member and damage to track and equipment. The fact finding was held on July 28, 1999.

On August 19, 1999, the Claimant's Foreman rights were revoked for his purported violation of Rule 1.1.2 and Rule 7.1 of the Carrier's General Code of Operating Rules and MRL General Safety Rules 2 and 143. Engineer Dorsey was exonerated of

any responsibility for the collision. Switchman Pisenno was dismissed from service and was reinstated on a leniency basis on May 1, 2000, with two years' probation.

The Organization appealed the Claimant's discipline contending that he was not responsible in any way for the derailment in Billings Yard on July 20, 1999. It was the Organization's position that Switchman Pisenno bore sole responsibility for the collision by failing to secure the cars left standing on Track 1001 after 15 cars were cut out.

That a serious derailment occurred in Billings Yard on July 20, 1999, is not in dispute. Three tank cars containing hazardous materials derailed. Public roads were closed and a business area had to be evacuated for about six hours while the derailment was cleaned up. The Carrier was criticized in the media for this derailment.

Nevertheless, the evidence adduced at the July 28, 1999, fact finding fails to convince this Board that the Claimant had any responsibility for this serious mishap. Rather, the sole responsibility rests with Switchman Pisenno who neglected to secure the cars left standing on Track 1001. These unsecured cars rolled out of the track colliding with cars being pulled by Engineer Dorsey.

We recognize that as the Switch Foreman of the Laurel-Billings transfer assignment, the Claimant had overall responsibility for this job. Notwithstanding this responsibility, he had the right to rely on the other members of the crew to properly discharge their respective responsibilities. It is worth noting that Engineer Dorsey and Switchman Pisenno had worked this assignment together for the previous year and one-half. Additionally, Switchman Pisenno had worked in train service on MRL since 1987. He had some 12 years of train service experience at the time of this incident.

When Engineer Dorsey instructed Switchman Pisenno to cut away cars on Track 1001 that had to be placed on the rear of their outbound train, there was no reason to hold a job briefing, in this Board's opinion. This was not an atypical movement for the Laurel-Billings transfer assignment. It was a simple cut out of 15 cars. Switchman Pisenno did not have to be reminded not to rely on the air brakes to hold the cars left on Track 1001 when the other cars were cut off. He acknowledged that he should have provided a sufficient number of hand brakes to prevent the cars from moving. He admitted violating Rule 7.6 of the Carrier's General Code of Operating Rules.

We are not convinced from the evidence produced at the July 28, 1999, fact finding that the Claimant violated Operating Rule 1.1.2 and Rule 7.1 or Safety Rules 2 and 143. There is no persuasive evidence in the record that he was not alert or attentive to his duties in Billings Yard when cars were being cut out of old yard one. Nor did he work unsafely during this switching movement. Moreover, the Claimant did not disobey any rule that was essential to safety. Furthermore, all members of the Laurel-Billings transfer crew had a clear understanding of the movement being made. Unfortunately, one member of the crew, Switchman Pisenno, failed to discharge his responsibility and this resulted in a serious derailment and criticism of the Carrier.

Inasmuch as the Claimant did not violate any of the rules for which he was disciplined on August 9, 1999, that discipline must be removed from his record and his Switch Foreman rights must be restored. The Claimant's seniority rights must be reinstated if they were affected by revocation of his Switch Foreman's rights and he must be made whole for any losses he incurred as a result of his suspension.

AWARD: Claim sustained.

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



Robert M. O'Brien
Chairman and Neutral Member

Dated: