

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6423**

John C. Fletcher, Chairman & Neutral Member
Kendall F. Koff, Carrier Member
Dale L. McPherson, Employee Member

**BROTHERHOOD OF LOCOMOTIVE ENGINEERS
CPR-US/METRA/IMRL**

and

I & M RAIL LINK, LLC

**Award No. 10
Case No. 10
Claimant T. Girdler**

Date of Hearing-September 5, 2001

Date of Award-February 10, 2002

Statement of the Issue

The Chairman and Neutral Member, after review of the entire record, has determined that the issue before this Board is:

Was Carrier justified in assessing Switch Foreman Girdler ten (10) days actual suspension and ten (10) days deferred suspension in connection with an accident at La Farge Clay resulting in damage to an overhead industry structure and Locomotive IMRL 130 on December 1, 1999?

FINDINGS:

Public Law Board No. 6423, upon the whole record and all of the evidence, finds and holds that the Employee(s) and the Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute(s) herein.

On December 1, 1999, Claimant was called as Foreman for an extra local job switching the La Farge Clay Company at Linwood, Iowa. The record establishes that while so doing, Claimant directed a reverse switching movement which resulted in the collision of Locomotive IMRL 130 with a fixed overhead structure of insufficient clearance. Accordingly, Claimant was directed to attend a formal investigation in connection with the following charge:

Attend a fact-finding session...to ascertain the facts and determine your responsibility, if any, for your allegedly shoving cars under the unloading platform at La Farge clay track while on duty at approximately 1320 hours, December 1, 1999. This incident may have involved a violation of General Code of Operating Rules:

- Rule 1.1 – by your failure to obey the rules
- Rule 1.1.1 – by your failure to take the safe course
- Rule 7.1 – by your failure to switch safely and efficiently
- Rule 7.10 – by your failure to move safely through a gate or doorway

An evidentiary hearing into the matter was held on December 17, 1999, during which Claimant described events culminating in the collision of the IMRL 130 with the fixed overhead platform on the industry switching track at La Farge Clay. Claimant testified that although he was not regularly assigned to switch that industry, he had done so on a number of other occasions. He testified however, as did his entire crew, that service at La Farge was always approached from the west end, and on this particular day the west end switch was out of service. Claimant testified that he was consequently directed by Carrier's Trainmaster and Terminal Superintendent to go in from the east.

According to facts not in dispute, this decision proved to be significant to succeeding events in a number of ways. First, the record establishes that the overhead structure with which the locomotive collided, posed no threat when switching from the west end of the plant. Moreover, it was neither equipped with clearance measurements or warnings, and the record shows that the Trainmaster and Terminal Superintendent were not, themselves, aware that it represented potential danger to a train approaching from the east. Claimant testified that he was in front of the move as is required by General Operating Rules, but was paying attention to an upcoming road crossing when the incident occurred. He further allowed that the clearance between the top of the locomotive and the overhead beam was close, and would have been difficult to judge visually.

Following the hearing, Claimant was suspended for 16 days by letter dated January 10, 2000¹, and was assessed an additional 10 days deferred suspension. In due course the instant time claim was presented, and as the matter could not be resolved on the property, it was submitted to the Board for disposition.

Carrier argues that Claimant was found responsible as charged at the hearing, and the discipline assessed was therefore warranted. Carrier asserts that Claimant, as switch foreman of his crew, was responsible for the safe operation of his train on December 1, 1999, and his manifest failure to satisfy that obligation resulted in significant damage to Locomotive IMRL 130 and to the overhead structure at La Farge Clay. As such, Carrier maintains that its action was appropriate and urges the Board to deny the claim in its entirety.

The Organization argues that Claimant was not entirely responsible for the accident on December 1, 1999, asserting that, "[He] was instructed by a Carrier officer to switch an industry in a manner that was completely contrary to normal switching procedures at this location" (Organization submission at page 1). The Organization further points to Claimant's relative inexperience as a switch foreman (this was only his second assignment as such), and accuses Carrier officers of failing to "instruct, oversee, inform and guide" him after directing him to switch La Farge Clay in a manner inconsistent with normal practice. The Organization reminds the Board that the fixed overhead structure at La Farge Clay would never have come into play had Claimant been able to spot cars from the west end of the plant as usual, and argues that Carrier unreasonably expected him to anticipate a potential hazard never before encountered by any member of his crew. Upon the whole of the record, the Organization urges the Board to find the instant circumstances exculpatory and sustain the instant claim in its entirety.

After considering the entire record, the Board is persuaded by the Organization's arguments. The Board acknowledges and supports Carrier's right to hold its employees accountable for failing to perform service in the safest possible manner, particularly when that failure proves catastrophic, as here. However, like it or not, Carrier officers directed Claimant, a very inexperienced switch foreman, to proceed in a manner inconsistent with accepted practice and then left him to his own devices without considering the potential for hazard to his safety or that of his train and crew.

Moreover, the Board is not convinced that Claimant's *negligence* (or his abject violation of safety rules) caused this accident as much as unforeseen circumstances did. The record is clear that the overhead platform at La Farge Clay did not display clearance measurements or warnings, nor did Carrier's timetable include that critical information.

¹ Claimant was required to serve a prior 6-day deferred suspension in addition to the 10 days' actual suspension assessed on January 10, 2000.

Yet, Carrier disciplined Claimant for not anticipating a problem at that location that he (and all other switch crews for that matter) had neither been informed of nor encountered. The Board finds this expectation unreasonable, particularly in light of testimony indicating that even Carrier officers were unaware of the potential danger presented by the overhead platform when switching La Farge Clay from the east end of the plant. As such, the Board finds the circumstances in this particular record sufficiently exculpatory as to exonerate Claimant of either willfully or negligently violating Operating Rules for which he was charged. The claim will be sustained, and the discipline assessed on January 10, 2000 set aside.

Carrier is ordered to expunge Claimant's service record of any reference to the events of December 1, 1999, and compensate him for all time and benefits lost as a result thereof.

AWARD

The issue before the Board:

Was Carrier justified in assessing Switch Foreman Girdler ten (10) days actual suspension and ten (10) days deferred suspension in connection with an accident at La Farge Clay resulting in damage to an overhead industry structure and Locomotive IMRL 130 on December 1, 1999?

is answered in the negative, "No". The claim is sustained as set forth in the findings.

ORDER

Carrier is directed to comply with this Award within thirty (30) days of the date indicated below.



John C. Fletcher, Chairman and Neutral Member



Kendall F. Koff, Carrier Member



Dale L. McPherson, Employee Member

Dated at Mount Prospect, Illinois, February 10, 2002