

PUBLIC LAW BOARD NO. 4225

Claimant - R. G. Snow
Award No. 6

Case No. 6

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to suspend Claimant from its service for a period of thirty (30) days was excessive, unduly harsh and in abuse of discretion and in violation of the terms and provisions of the current Collective Bargaining Agreement.

2. That because of the Carrier's failure to prove and support the charges by introduction of substantial bona fide evidence, that Carrier now be required to compensate Claimant for any and all loss of earnings suffered, and that the charges be removed from his record.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Special Board of Adjustment is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

The Claimant was a Foreman on Gang 9095 when he received a "Notice of Charges" dated July 9, 1991. According to same, he

allegedly failed to follow the instructions of his Track Supervisor on July 3, 1991, who directed him to clean excess ballast off the Hyrail set-off at Sano, Nevada, as well as, off the tracks between MP 400 and 401 on the Elko Sub.

The Claimant was offered a waiver of a thirty (30) day deferred suspension, which would remain on his record for six months and was to be served only if he was assessed another deferred or actual suspension in the interim. If the Claimant rejected the thirty (30) day deferred suspension, he could request a hearing on the charges. The Claimant requested the hearing.

According to the charge letter, the Claimant allegedly violated the following rules:

GENERAL NOTICE

Rules cannot be written to cover every possible situation that may arise in connection with each and every individual task connected with your work; therefore, certain definite responsibilities rest upon you, namely;

- (1) Protection of yourself.
- (2) Protection of your fellow employees.
- (3) Protection of the public.
- (4) Reporting to those in authority any dangerous condition or unsafe practice where such is found to exist.

Suggestions from employees intended to promote safety, economy, or improve service, are solicited and will receive consideration.

GENERAL RULES

A. Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety and to remaining in service.

The service demands the faithful, intelligent and courteous discharge of duty.

B. Employees whose duties are prescribed by these rules must have a copy available for reference while on duty.

Employees whose duties are affected by the timetable and/or special instructions must have a current copy immediately available for reference while on duty.

Employees must be familiar with and obey all rules and instructions and must attend required classes.

If in doubt as to the meaning of any rule or instruction, employees must apply to their supervisor for an explanation.

Rules may be issued, canceled or modified by general order, timetable or special instructions.

When authorized by superintendent, general orders or special instructions may be canceled, modified or issued by train order Form Q or track bulletin.

E. Accidents, personal injuries, defects, in track, bridges or signals, or any unusual condition which may affect the safe and efficient operation of the railroad, must be reported by the first means of communication. Written report must follow promptly when required.

Rule 607: CONDUCT: Employees must not be:

- (1) Careless of the safety of themselves or others;
- (2) Negligent;
- (3) Insubordinate;
- (4) Dishonest;
- (5) Immoral; or
- (6) Quarrelsome.

The conduct of any employe leading to conviction of any misdemeanor involving moral turpitude (including without limitation, the unlawful use, possession, transportation or distribution of narcotics or dangerous drugs including marijuana or controlled substances) or of any felony is prohibited.

Rule 1510: WORK STANDARDS

All work performed upon the track, bridges, structures, signal systems and other track facilities, must be done as shown on Standard Drawings, or other prescribed standards, plans, and specifications. Work must be undertaken in a manner prescribed by the Maintenance of Way Rules and Chief Engineer's instructions.

Foreman are responsible for ensuring that the work performed by forces under their jurisdiction is done in such a manner that it will not constitute a hazard to the safety of the men performing the work, will not result in an unstable or unsafe track condition, or create a hazard to safe movement of trains.

Rule 1511: FOREMAN RESPONSIBILITY:

Foreman must supervise and engage in all work of their gang; see that work is properly and safely done and make such reports as are required.

They must not exceed their allowance of men or work overtime unless authorized, except in an emergency.

The Union argues that the track was not in the condition reported, but that the Claimant had dumped the ballast and had then proceeded over it with a plow tie. Regardless, he did comply with the request of the Track Supervisor to do additional clearing the next day. He sent three men to shovel the ballast from the Hyrail set-off. According to the testimony of a Union

witness, it took the three men about five minutes to clear the tracks of the ballast. Afterwards it was inspected by the Claimant who testified the work was done to his satisfaction. The Claimant also testified, that he ran the first train over the tracks in question (MP 400-401) at a restricted speed and the train reported no trouble with excessive ballast. Therefore, the ballast was not so high as to interfere with trains or their dangling hoses.

On the other hand, the Carrier claims the Claimant failed to clean the excess ballast off the tracks and several trains severed their air hoses the next day. In addition, one hyrail derailed trying to plow the excess ballast, after the Claimant was supposed to have taken care of the problem. There could have been serious accidents as a result of the high ballast since the track speed in the area was such that trains who broke their air hoses could have easily derailed.


The Board believes there is sufficient evidence to support the charges. According to the testimony of Company witnesses, trains had numerous problems on July 4, 1991, the day after the Claimant was told to clean up the ballast. In fact, several trains reported broken air hoses and attributed it to the high ballast. In addition, the Hyrail which attempted to plow through the ballast derailed. We can see no reason to discount this evidence. It is both credible and uncoerced. There is no proof that it in any way was contrived. Therefore, whether the Claimant failed to clean up the ballast himself or failed to properly supervise the crew he sent out to do the work, he must

accept the responsibility for the work not being completed.

Having found the Claimant guilty of the charges, this Board is left with determining whether the offense warrants the thirty (30) days of actual suspension. The Claimant was given a direct order to clean the ballast off the tracks, both at the hyrail set-off and between MP 400-401. His failure to do so violated a direct order. This was a serious offense in and of itself, but in no way was it as serious as jeopardizing the safety of other employees who were crews on other trains and track cars utilizing those sections of track. Therefore, even though the Claimant has a lengthy tenure with the Carrier and has a good employment record, we find the violation serious enough to warrant the penalty as issued.

AWARD

The Claim is denied.



Carol J. Zamperini
Neutral

Submitted:

September 25, 1990
Denver, Colorado