NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6041

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BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BNSF SANTA FE, GENERAL COMMITTEE

and

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

Award No. 1
Case No. 1
T. L. Ast

Date of Hearing - October 22, 1997
Date of Award -March 26, 1998

Statement of Claim:

Claim for Colorado Division Engineer T. L. Ast for pay for all time lost while being withheld from service from the Burlington Northern Santa Fe Railway Company while serving a sixty day suspension, including pay for time lost attending the formal investigation and that Mr. Ast's personal record be expunged of any mention of the incident of March 22, 1995.

FINDINGS:

Public Law Board No. 6041, 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; and, that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

On March 22, 1995, the herein Claimant, T. L. Ast, went duty at 4:30 a.m., at the Denver diesel shop as a helper service engineer on Job J-15001-22. When Claimant and his conductor reported to the Round House Foreman to pick up their power, they were told that it was "already to go," to take the two East units, Nos. 5126 and 7153 from a three unit consist that had recently been serviced and was parked on the East 2 lead. As Claimant and his Conductor approached the three units they noticed that the chains, air lines, and MU connections between their power and the third Unit, No. 6397, had been disconnected. Claimant proceeded to the forward cab of the 5126 - 7153 consists while the Conductor went to the East pin on 6397. After Claimant boarded the consist the Conductor called on the radio and asked the Engineer to give him the pin. Claimant moved the consist about two feet, when a voice came over the radio stating that Unit 6397 had run over a derail. The incident was reported to Carrier Supervisors and Claimant and the Conductor were taken in for drug testing.

On April 13, 1995 Claimant was cited to attend an investigation on the:

> [Incident] that occurred on March 22, 1995, wherein BN Locomotive 6397 was not properly secured before it was pulled away from, allowing Locomotive BN 6397 to roll away and over derail, causing locomotive to derail and possible violation of Rule 7.6 of the General Code of Operating Rules effective April 10, 1994.

After a brief postponement, the investigation was held on May 3, 1995. Under date of May 11, 1995, Claimant was sent two letters, one a Positive Corrective Action providing for a conditional reduced suspension, and the other a notice of Level 5 suspension of 60 days. Claimant's Representative, on May 25, 1995, notified Carrier that he was unwilling to accept the Positive Corrective Action. The actual 60 day suspension was made the subject of a grievance, and after handling "on-the-property" without settlement, was timely appealed to this Board.

The Organization appeals the discipline on both procedural and substantive grounds. It contends that the investigation was flawed when Carrier did not have in attendance a Hostler witness that it requested. Further, it denies any wrongdoing on Claimant's part. Finally, it argues that the discipline was excessive in any acceptable circumstances.

Carrier maintains that it proved that Claimant was in violation of Rules 7.6 and 62.9 with sufficient and substantial evidence. It maintains that Claimant failed to exercise prudent judgment in assuring that locomotive No. 6397 was properly secured prior to uncoupling from the unit. Carrier says that the derailment was cause because Claimant made an inappropriate assumption that someone else would be responsible for complying with the rules, and he should have made sure that the engine would not roll-out, as he was never directly told by anyone that it had been secured. Carrier also contends that the discipline assessed is correct. Level 5 discipline is assessed in serious offenses involving instance where an employee has failed to perform duties contributing to a derailment, damage to rolling stock, or shop machinery. Even though severe damage, death or injury did not result from Claimant's carelessness, the potential existed, thus the discipline was warranted.

After review of this entire record the Board has several concerns on the procedures followed and the discipline assessed. Procedurally, the Board considers the investigation to be flawed because a witness requested by the Organization was not called even though there is no showing that the witness was not readily available. The witness was a Hostler whose testimony could have shed light on the condition of the equipment after it was serviced and placed on the East 2 lead, and who was responsible for cutting the air lines, dropping the chains, and unplugging the MU line, without setting the hand brake. Another problem the Board faces in this matter is that while the notice of investigation only mentioned one of Carrier's Rules as a "possible violation," the letter assessing discipline noted that two were violated. It is basic that a charged employee is entitled to be made aware of the specific rules he is alleged to have violated, and Carrier is not privileged to expand on the notice of charges in the investigation, or in the letter assessing discipline.

Finally, the Board is concerned with evidence relied upon in support of discipline. It is obvious that someone other than Claimant was responsible for breaking Unit 6397 away from the other two Units. The Board also accepts that Claimant had a basis to

believe, from the totality of the instructions given by the Roundhouse Foreman, that all that was necessary was that he uncouple the Units he was to operate from Unit 6397. And importantly, it should be noted that Claimant did not make his move until after he was told to do so by the Conductor that was on the ground.

Claimant is an Engineer, and while he has a vast amount of responsibility to ensure that incidents of the type under review here do not occur, in meeting this responsibility he may rely upon others to do their jobs properly. In this matter it is apparent that others did not fulfill the proper expectations of their jobs. And it is apparent that the Roundhouse Foreman lead Claimant to believe that all that was necessary was that he uncouple from the power that was to be left on the lead.

Carrier has cited three awards that it argues support discipline of employees involved when equipment was allowed to roll free causing a derailment. The Board has examined each of these awards with care, and notes that not one involved an incident with facts similar to that under review here. Award No. 1 - PLB 3193 dealt with discipline of a switch crew and Award 88 - PLB 5124 involved discipline of Yardmen when cars they had worked, later rolled out. The single case that concerns discipline of an Engineer, Award 59 - PLB 3373, involved a situation where the Claimant "caused the independent air brakes to release by placing the MU-2-A valve in a 'trail' position, which was an egregious error" resulting in a runaway while he was off the engine consist eating lunch. The record made in Award 59 is conclusive that the Engineer was solely responsible for the runaway, because of his "egregious error." The record before the Board in this case is simply not conclusive at all that Claimant was in any way responsible for the runout of Unit 6397.

Accordingly, the discipline assessed in this matter will not be allowed to stand. Carrier is directed to remove all reference of the incident from Claimant's personnel record and to compensate him for all time lost as a result of the suspension.

A W A R D

Claim sustained.

O R D E R

Carrier is directed to comply with this award and make any payments due Claimant within thirty days of the date indicated below.

John C. Fletcher, Chairman & Neutral Member

Gene L. Shire, Carrier Member

Don Hahs, Employee Member

Dated at Mt. Prospect, Illinois., March 26, 1998